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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 365

NOAH ADAIR, PETITIONER,

vs.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 24, 1937.

CERTIORARI GRANTED OCTOBER 18, 1937.

SUPREME COURT OF THE UNITED STATES

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[fol. 4] **IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA**

DEBTORS PETITION IN PROCEEDINGS UNDER SECTION 75 OF THE BANKRUPTCY ACT—Filed August 6, 1936

To the Honorable Judges of the District Court of the United States for the Southern District of California, Central Division:

The petition of Andrea Cuccia, of R. 1, Etiwanda, California, in the County of San Bernardino, and District & State of California, respectfully represents:

That he is personally bona fide engaged primarily in the farming operations (or that the principal part of his income is derived from farming operations) as follows: vin-yard; that such farming operations occur in the County of San Bernardino, within said judicial district; that he is insolvent (or unable to meet his debts as they mature); and that he desires to effect a composition or extension of time to pay his debts under Section 75 of the Bankruptcy Act.

That the schedule hereto annexed, marked "A" and verified by your petitioner's oath, contains a full and true statement of all his debts and so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act.

[fol. 5] That the schedule hereto annexed, marked "B" and verified by your petitioner's oat-, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore your petitioner prays that his petition may be approved by the court and proceedings had in accordance with the provisions of said section.

Andrea Cuccia, Petitioner.

Duly sworn to by Andrea Cuccia. Jurat omitted in printing.

[fol. 6] SUMMARY OF DEBTS AND ASSETS

(From the Statements of the Bankrupt in Schedules A and B)

				Dollars	Cents
Schedule	A....	1 (1)	Taxes and Debts due United States.....	Nil	
"	A....	1 (2)	Taxes due States, Counties, Districts and Municipalities.....	Nil	
"	A....	1 (3)	Wages.....	250	.00
"	A....	1 (4)	Other Debts preferred by law.	Nil	
"	A....	2	Secured claims.....	12681	.15
"	A....	3	Unsecured claims.....	13350	.42
"	A....	4	Notes and bills which ought to be paid by other parties thereto.....	Nil	
"	A....	5	Accommodation paper Schedule A, total.....	Nil	
				26031	.57
Schedule	B....	1	Real Estate.....	22500	.00
"	B....	2-a	Cash on hand.....	Nil	
"	B....	2-b	Bills, promissory notes and securities.....	Nil	
"	B....	2-c	Stock in trade.....	Nil	
"	B....	2-d	Household goods, etc.....	1200	.00
"	B....	2-e	Books, prints and pictures...	Nil	
[fol. 7]					
"	B....	2-f	Horses, cows and other animals.....	100	.00
"	B....	2-g	Carriages and other vehicles..	10	.00
"	B....	2-h	Farming stock and implements.....	60	.00
"	B....	2-i	Shipping and shares in vessels.	Nil	
"	B....	2-k	Machinery, tools, etc.....	Nil	
"	B....	2-l	Patents, copyrights and trade marks.....	Nil	
"	B....	2-m	Other personal property.....	Nil	
"	B....	3-a	Debts due on open account..	Nil	
"	B....	3-b	Stocks, negotiable bonds, etc.	Nil	
"	B....	3-c	Policies of insurance.....	Nil	
"	B....	3-d	Unliquidated claims.....	Nil	
"	B....	3-e	Deposits of money in banks and elsewhere.....	Nil	
"	B....	4	Property in reversion, remainder, trust, etc.....	Nil	
"	B....	5	Property claimed to be exempt.....	1370	.00
"	B....	6	Books, deeds and papers....	Nil	
			Schedule B, total.....	25240	.00

Andrea Cuccia, Petitioner.

[fol. 8] [1]

Schedule A (2)

Creditors Holding Securities

(N. B.—Particulars of Securities held, with dates of sale, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the acts of Congress relating to Bankruptcy; and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact must be stated). Description of Securities.—When and where debts were contracted.—Value of securities.

	Dollars	Cents
Bank of America, Ontario, California, note secured by trust deed, Date unknown, Contracted at Ontario, California, executed by Domenica Borgoia Cuccia, and Andrea Cuccia, for value and description of property securing said loan, See page 7	12681	15
Bank of America, Ontario, California, Chattell Mortgage, Amount unknown, Date unknown, No Consideration, signed by *deseption*		
Total	12681	15

Andrea Cuccia, Petitioner.

* * * * * * *

[fol. 9] Oath to Schedule A

UNITED STATES OF AMERICA,
Southern District of California,
Central Division, ss:

On this fourth day of August, A. D. 1934, before me, personally came Andrea Cuccia the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

Noah Adair, Notary Public in and for the County of San Bernardino, State of California. (Seal.)

[File endorsement omitted.]

[fol. 10] IN UNITED STATES DISTRICT COURT

No. 23615-M

In the Matter of ANDREA CUCCIA, Bankrupt

PETITION FOR ORDER DIRECTING ACCOUNTING—Filed February 6, 1936

To the Honorable Judges of the Above Entitled Court:

The petition of Bank of America National Trust and Savings Association respectfully shows:

I

That petitioner is and was at all times herein mentioned a national banking association organized and existing under and by virtue of the laws of the United States of America.

II

That on or about December 5, 1930, the above named bankrupt executed and delivered to petitioner his certain promissory note in words and figures as follows, to-wit:

"$11,850.00. Ontario, California, December 5, 1930.

For value received I promise to pay in lawful money of the United States of America to the order of Bank of America National Trust and Savings Association in its offices in this city the principal sum of Eleven Thousand [fol. 11] Eight Hundred Fifty and no/100 Dollars ($11,850.00) with interest from date on deferred balances until paid at the rate of seven per cent per annum, payable quarterly. Said principal sum and said interest payable as follows: Five Hundred and no/100 Dollars ($500.00), or more and said interest on the 5th day of January 1931, and Five Hundred and no/100 Dollars ($500.00), or more and said interest on the 5th day of February and Ten Thousand Eight Hundred Fifty Dollars on the 5th day of June 1931, on which said date the entire balance of principal and interest then unpaid shall become due and payable.

Should the interest not be so paid it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment when due of any part or installment of the principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in lawful money of the United States of America.

A deed of trust secures the indebtedness evidenced by this note.

Andrea Cuccia, Minni Borgia Cuccia."

III

That contemporaneously with the execution of the said promissory note and as part of the same transaction and as security for the payment of principal and interest of said indebtedness, the said bankrupt executed and delivered to [fol. 12] petitioner a deed of trust conveying certain real property situated in the County of San Bernardino, State of California, to Corporation of America, a corporation, as trustee, for Bank of America National Trust and Savings Association, as beneficiary; that the said deed of trust was recorded in the office of the County Recorder of the County of San Bernardino, State of California, on January 16, 1931, in Book 694 of Official Records at page 147.

IV

That thereafter, as additional security for the payment of said promissory note, the said bankrupt made, executed and delivered to petitioner a crop and chattel mortgage dated April 13, 1933, wherein and whereby the said bankrupt mortgaged to petitioner all crops of whatsoever kind or character, including that certain crop of grapes of all varieties then planted or growing, or that may during the years 1933 and 1934 be planted or grown or that may be planted or grown prior to the payment in full of the indebtedness secured by said crop and chattel mortgage upon that certain real property situated in the County of San Bernardino, State of California, described in the said chattel mortgage, being the same real property as that described in the deed of trust hereinabove referred to; that the said crop and chattel mortgage was acknowledged so as to entitle the same to be recorded and was thereafter on the 15th day of April, 1933, recorded in the office of the County Recorder of the County of San Bernardino, State of California, in Book 882 of Official Records, at page 872, and was re-recorded on the 3rd day of May, 1933, in the office of said Recorder in Book 891 of Official Records at page 1.

[fol. 13]

V

That on the 4th day of August, 1934, the above named bankrupt filed his petition under Section 75 of the Bank-

ruptcy Act; that the above entitled court thereupon approved the said petition and referred the proceedings thereunder to Noah Adair, Conciliation Commissioner in and for the County of San Bernardino, State of California.

VI

That thereafter the said bankrupt failed to make any agreement of composition or extension with his creditors and on the 7th day of January, 1935, filed a petition under Section 75-S of the Bankruptcy Act as the same existed at that time; that the said bankrupt was thereupon adjudged a bankrupt and the proceedings upon the said petition were referred to D. W. Richards, as Referee in Bankruptcy in and for the County of San Bernardino, State of California.

VII

That thereafter the above entitled proceedings were dismissed by an order of the above entitled court made and entered on the 14th day of October, 1935.

VIII

That the aforesaid crop and chattel mortgage held by petitioner upon all of the crops growing upon the real property of the said debtor was a valid and proper lien upon all crops growing upon the said property during the years 1934 and 1935; that subsequent to the filing of the petition in the [fol. 14] above entitled proceedings Noah Adair, as Conciliation Commissioner in and for the County of San Bernardino, harvested all of the crops growing upon the real property described in said crop and chattel mortgage and received the proceeds thereof; that petitioner has demanded an accounting of the said Noah Adair, as such Conciliation Commissioner, of the proceeds received from the said crops; that the said Noah Adair has failed and refused to render to petitioner an accounting thereof and petitioner is informed and believes and upon such information and belief alleges that the said Noah Adair has received from the proceeds of said crops the sum of approximately $1,500.00.

IX

That during the year 1935, and subsequent to the dismissal of the above entitled proceedings, on October 14, 1935, petitioner is informed and believes and upon such

information and belief alleges that the said Noah Adair, Conciliation Commissioner, sold the crops then growing upon the real property of the said debtor described in the said crop and chattel mortgage hereinabove referred to and upon which petitioner held a valid lien by reason of said crop and chattel mortgage; that the said Noah Adair has failed and neglected and refused to account to petitioner for the proceeds of said crops.

Wherefore, petitioner prays for an order of this court directing the said Noah Adair, as Conciliation Commissioner in and for the County of San Bernardino, State of California, forthwith to render and file in the above entitled proceedings an accounting of all funds received by him as such Conciliation Commissioner from the sale of crops grown [fol. 15] upon the property of the debtor during the years 1934 and 1935.

Bank of America National Trust and Savings Association, by A. G. Maurer, Vice President. Edmund Nelson, Hugo A. Steinmeyer, Attorneys for Bank of America National Trust and Savings Association.

Duly sworn to by A. G. Maurer. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT

ORDER DIRECTING ACCOUNTING—Filed February 6, 1936

Upon reading and filing the verified petition of Bank of America National Trust and Savings Association in the above entitled proceedings, and good cause appearing therefor, it is hereby

Ordered that Noah Adair, as Conciliation Commissioner in and for the County of San Bernardino, State of California, render and file in the above entitled pro-eedings within ten days from the date of service of this order a full, true and correct accounting of all moneys received by the said Noah Adair, as Conciliation Commissioner, from crops grown upon the property of the above named bankrupt.

Dated: This 6th day of February, 1936.

Paul J. McCormick, United States District Judge.

[File endorsement omitted.]

[fol. 17] IN UNITED STATES DISTRICT COURT

ACCOUNT—Filed February 17, 1936

September 26, 1934—An account in the name of Andrea Cuccia and Noah Adair was opened with the American National Bank, San Bernardino, California, and a deposite of $1437.37 was made	$1,437.37
September 26, 1934—Cash, labor, for 20 men on ranch Court Order issued	$340.00
October 1, 1934—Andrea Cuccia	59.33
October 30, 1934—Andrea Cuccia, 14 days labor Court order issued	42.00
November 27, 1934—Andrea Cuccia, $15. living expense $20. filing fee under 75 (s) and $20. feed for horse. Court order	55.00
December 20, 1934—Andrea Cuccia, $10.00 feed for horse and $10. living expense	20.00
January 22, 1935—Andrea Cuccia, $20. and labor on grove $144.00	164.00
[fol. 18] January 22, 1935—D. W. Richards indemnity fee under Section 75 (s)	18.25
February 1, 1935—Andrea Cuccia, labor, 8 men, 11 day each	264.00
February 15, 1935—Andrea Cuccia labor	90.00
March 15, 1935—Andrea Cuccia, $45. labor; $20. hay and $10. living expense	75.00
April 19, 1935—Jos E. Rich, Court Reporter	22.50
April 19, 1935—Ralph W. Eckhardt, attorneys fee	50.00
April 19, 1935—Andrea Cuccia, 37 days work of hired men	111.00
May 11, 1935—Andrea Cuccia, sulpher for grapes	60.00
June 1, 1935—Andrea Cuccia, labor for two men working in grapes	30.00
Total	$1,401.08
Tax, etc.	.60
	$1,401.68

Balance in bank to date, $35.69.

Noah Adair.

[File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

OBJECTIONS AND EXCEPTIONS TO ACCOUNT—Filed June 12, 1936

Comes now Bank of America National Trust and Savings Association and objects to the account of Noah Adair, as Conciliation Commissioner, filed in the above entitled proceedings and each and every of the items of disbursement set forth in the said account and for grounds of objection and exception specifies the following:

I

That Bank of America National Trust and Savings Association, hereinafter referred to as said creditor, is a national banking association duly organized and existing under and by virtue of the laws of the United States of America.

II

That on or about December 5, 1930, Andrea Cuccia and Minni Borgia Cuccia executed and delivered to said creditor their promissory note in words and figures as follows, to-wit:

"$11,850.00. Ontario, California, Dec. 5, 1930.

For Value Received I promise to pay in United States Gold Coin of the present standard of weight, fineness and value to the order of Bank of America National Trust and Savings Association in its offices in this city the principal sum of eleven thousand eight hundred fifty and 00/100 dollars ($11,850.00) with interest from date on deferred balances until paid at the rate of seven per cent per annum, payable quarterly. Said principal sum and said interest payable as follows: Five Hundred and 00/-00 Dollars [fol. 20] ($500.00) or more and said interest, on the 5th day of January 1931, and Five Hundred and 00/100 Dollars ($500.00) or more and said interest on the 5th day of February and Ten thousand eight hundred fifty dollars on the 5th day of June, 1931, on which said date the entire balance of principal and interest then unpaid shall became due and payable.

Should the interest not be so paid it shall become part of the principal and thereafter bear like interest as the

principal. Should default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States, of the present standard of weight, fineness and value.

A deed of trust secures the indebtedness evidenced by this note.

Andrea Cuccia, Minni Borgia Cuccia."

III

That at the time of the execution of said note and as part of the same transaction the said Andrea Cuccia and Minni Borgia Cuccia in order to secure the payment of the said promissory note and of the moneys and interest therein provided and agreed to be paid, executed and delivered a deed of trust to Corporation of America, as trustee in favor of said creditor, as beneficiary, covering the real property situated in the County of San Bernardino, State of California, described as follows, to-wit:

[fol. 21] "The North Half (N. ½) of the North One-Third (N. ⅓) of the West Half (W. ½) of Section Sixteen, Township One South, Range Six West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, according to Government Survey.

Saving and excepting therefrom the South Half (S. ½) of that portion of the North Half (N. ½) of the North One-Third (N. ⅓) of the West Half (W. ½) of said Section 16, described as follows:

Beginning at a point where there is set a three-fourths (¾) inch iron pipe set on a paved road known as Etiwanda Road, being set for the Northwest corner of Section Sixteen (16), Township One (1) South, Range Six (6) West, San Bernardino Base and Meridian; thence North 88° 30' East Two Hundred Fourteen and Ten-hundredths (214.10) feet to a point, thence at right angles in a Southerly direction three hundred sixty-six and fifty-five hundredths (366.55) feet to a point, thence at right angles Two Hundred Fourteen and ten-hundredths (214.10) feet to a point on the line of Etiwanda Road; thence at right angles and along the line of Etiwanda Road Three Hundred Sixty-six and Fifty-five hundredths (366.55) feet to the place of

beginning, containing One and Seventy-nine Hundredths (1.79) acres, more or less."

IV

That the said deed of trust was recorded in the office of the County Recorder of the County of San Bernardino, State of California, on January 30, 1931, in book 696 of Official Records at page 96.

V

That on or about April 13, 1933, as further security for the indebtedness evidenced by the said promissory note [fol. 22] hereinabove referred to, said Andrea Cuccia and Minni Borgia Cuccia executed and delivered to said creditor a crop and chattel mortgage upon all crops of whatever kind or character, including that certain crop of grapes of all varieties then planted or growing or that might during the years 1933-34 be planted or grown or that might be planted or grown prior to the payment in full of the indebtedness secured by the said crop and chattel mortgage upon the said real property hereinabove described in paragraph III hereof.

VI

That said crop and chattel mortgage contained the affidavit of good faith of the mortgagor and mortgagee required by law and was duly acknowledged so as to entitle the same to be recorded and was thereafter recorded in the office of the County Recorder of the County of San Bernardino, State of California, on April 15, 1933, in Book 882 of Official Records at page 272, and was re-recorded in the said County Recorder's office on May 3, 1933, in Book 891 of Official Records at page 1.

VII

That no part of the principal or interest of said indebtedness has been paid except that interest thereon has been paid to October 17, 1935, and the sum of $6,915.32 has been paid on account of the principal thereof and there is due, owing and unpaid on account of the said indebtedness the sum of $4,934.68, together with interest thereon at the rate [fol. 23] of seven per cent per annum from October 17, 1935.

VIII

That the sum of $1,437.37 shown by the said account to have been received by the said Noah Adair, as Conciliation Commissioner, was the proceeds of the sale of the crop of grapes grown upon the real property hereinabove described during the year 1934; that the said crops were subject to the crop mortgage executed by the above named debtor hereinabove described and said moneys received by the said Noah Adair with full knowledge that the said crops and the proceeds thereof were subject to the crop mortgage held by said creditor.

IX

The said creditor did not at any time during the pendency of the said proceedings have knowledge or notice of any order made by the above entitled court respecting the disbursement of any of the funds disbursed as shown by the said account and no valid order for the disposition of any of said funds was at any time made by the above entitled court.

X

That Andrea Cuccia, the debtor in the above entitled proceedings, filed a petition under Section 75 of the Bankruptcy Act on August 4, 1934; that thereafter on January 7, 1935, said debtor filed an amended petition under Subsection S of Section 75 of the Bankruptcy Act and was adjudicated a bankrupt under the said section and the [fol. 24] proceedings thereon were thereupon referred to D. W. Richards, Referee in Bankruptcy in and for the County of San Bernardino, State of California; that subsequent to the reference of said proceedings on January 7, 1935, to the said D. W. Richards, as Referee in Bankruptcy, Noah Adair, as Conciliation Commissioner, no longer had jurisdiction of the said proceedings.

Wherefore, said creditor prays that an order be made fixing the time of hearing upon the foregoing objections and exceptions to the said account and directing notice thereof to be given to the said Noah Adair, as Conciliation Commissioner in and for the County of San Bernardino, State of California, and that upon the hearing upon the said objections the said account and each and every of the items thereof be disallowed and that the said Conciliation

Commissioner be surcharged with the full amount of moneys received by him and improperly disbursed in the above entitled proceedings and that the said Commissioner's bond be delivered up to said creditor for the purpose of bringing an action thereon.

Bank of America National Trust and Savings Association, by A. G. Maurer, Vice President. Edmund Nelson, Hugo A. Steinmeyer, Attorneys for Bank of America National Trust and Savings Association.

[fol. 25] *Duly sworn to by A. G. Maurer. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 26] IN UNITED STATES DISTRICT COURT

CONCILIATION COMMISSIONER'S ANSWER TO OBJECTION TO ACCOUNT—Filed July 13, 1936

Comes now Noah Adair Conciliation Commissioner of San Bernardino, California to whom the above entitled matter was referred by the above named court in the above entitled proceedings August 6, 1934, and for answer to the objection of the Bank of America, National Trust & Savings Association to his account, states as follows:

That the land upon which said Bank of America claims a trust deed and a crop mortgage on the crops grown on said land is a grape vineyard which was in the possession of said debtor when this proceedings was institnted and has been in the possession of said debtor ever since, under the jurisdiction of the court. That the money received by said Conciliation Commissioner was the proceeds from the crop of grapes harvested under the direction of the Conciliation Commissioner in September, 1934, while said premises and said crops were under the exclusive jurisdiction and control of the court herein.

That said Bank of America claims a crop mortgage upon said premises covering crops for the year 1934 and 1935 and for the protection of said premises and said crops it is absolutely necessary that said vineyard on said land be attended to and all the items paid for labor and living

expenses of the debtor and feed for his horses were absolutely necessary to be paid in order to have said vineyard properly attended to. That the money paid to the debtor [fol. 27] was no advancement for his personal benefit but as pay for his work and the amount advanced him for feed for his horse and living expense was less than the payment to him of ordinary wages for the work which he actually and necessarily performed in the care of the crop and for the preservation of the vineyard and future crops thereon for the benefit of creditors and lien claimed by said Bank of America thereon.

That said debtor did not have any other means for his living expenses and therefore could not have performed said work without getting his feed.

That the item of $18.25 paid to D. W. Richards Indemnity fee was the fee required by said D. W. Richards, Referee in Bankruptcy in order to call the first meeting of creditors and was necessary to be paid in order to expedite the administration of the estate and preserve the assets for the benefit of creditors and said Bank of America, who claimed a lien thereon and was paid January 22, 1935 on the order of said D. W. Richards acting as Referee in the matter.

That the item of $22.50 paid to Joe E. Rich Court Reporter which was paid April 19, 1935 was also paid on the order of D. W. Richards Referee and this service was performed by said Reporter at the request of Hugo A. Steinmeyer attorney for said Bank of America in his letter dated February 6, 1935 addressed to said D. W. Richards requesting a shorthand reporter to take down the testimony as he desired to examine the bankrupt at the first meeting of creditors and at said examination of the bankrupt there did [fol. 28] most of the examining of said bankrupt and other parties and caused the said claim to be incurred by such a lengthy examination that the transcribing of same required about 35 pages.

That the item of $50.00 paid to Ralph W. Eckhardt paid April 19, 1935 was attorney fee for the attorney for the bankrupt which was also paid on an order of approval of said D. W. Richards Referee and was necessary expense incurred in the estate caused by the most vigorous attacks made by the attorney for the said Bank of America against

the carrying on of the administration under these proceedings.

That if the expenses set out in the account had not been paid and the care of said premises and crops had not been made, it would have resulted in a loss of crops and damage to the vineyard and premises greater than the total amount paid out under the orders of the Conciliation Commissioner herein, as set out in the account.

That while said Conciliation Commissioner has been informed that the said Bank of America claimed a crop mortgage upon the crops, said bank has not objected to the use of the crops in payment of the necessary performances and care for the crop and vineyard or necessary expenses in carrying on this proceedings until October 3, 1935 when all of said money had been expended and that said Bank of America had full knowledge December 13, 1935 of all items of the account to which an objection is made as a copy of said account was sent out in an injunction proceeding had against the said Bank of America at that time herein, and [fol. 29] that the same items of account were later filed with the court hereon on the demand of said bank under order directed to be filed February 6, 1936 and said Bank of America waited five months after that before making objections to said items.

That the said Bank of America never has proven it's claim covering its alleged crop mortgage or chattel mortgage for the crops grown on said premises with the Conciliation Commissioner herein and that said claim has not been allowed or approved by the court and no copy of the said mortgage or original has been filed with the said Conciliation Commissioner herein. That a proof of it's secured claim was filed with D. W. Richards acting as Referee February 14, 1935 but said Bank of America by proof of claim sets up its claim to a crop mortgage on the crops for the years 1934 and 1935 but no copy nor the original of mortgage is annexed thereto, and said Conciliation Commissioner has no knowledge that the said Bank of America has a valid crop mortgage on crops grown on said premises grown during the years of 1934 and 1935.

That said funds collected from the crops were duly deposited by said Conciliation Commissioner in the American National Bank in his official capacity and said sums in his

account have all been paid on his orders exclusively for the benefit of said estate according to his best judgment.

Noah Adair, Conciliation Commissioner.

[fol. 30] *Duly sworn to by Noah Adair. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OVERRULING OBJECTIONS AND EXCEPTIONS—September 14, 1936

This matter coming before the court for hearing on Objections and Exceptions of Bank of America National Trust & Savings Association to account of Noah Adair, Conciliation Commissioner, pursuant to order filed June 12, 1936, and on Answer of Conciliation Commissioner thereto; Hugo A. Steinmeyer, Esq., appearing as counsel for Bank of America, etc., and N. C. Peters, Esq., appearing for Conciliation Commissioner; C. W. McClain being present as official court reporter;

[fol. 32] Noah Adair is called, sworn, and testifies on direct examination by H. A. Steinmeyer, Esq., and there are offered, admitted in evidence, and marked

Creditor's Ex. 1. Copy of Referee's and Conc. Commis. Docket.

Creditor's Ex. 2. Copy of Petition of Debtor to expend funds.

Creditor's Ex. 3. Copy of Petition of Debtor for allowance & ord. thereon.

Creditor's Ex. 4. Copy of Letter, dated 11/2/34.

Creditor's Ex. 5. Copy of Letter dated 11/6/34.

Noah Adair testifies upon cross-examination by N. C. Peters, Esq., and answers questions propounded by the Court, and testifies upon redirect examination by H. A. Steinmeyer, Esq., and there are offered, admitted in evidence, and marked

Creditor's Ex. 6. Photostatic copy Corp. & Chattel Mortgage.

Conc. Com'r Adair's Ex. "A". Letter dated 2/6/35 from Bank of America to D. W. Richards.

Noah Adair testifies further upon re-cross-examination by N. C. Peters, Esq.

It is ordered that the Objections and Exceptions to the account be overruled and that same be settled and allowed. Exception noted in behalf of creditor.

[fol. 33] IN UNITED STATES DISTRICT COURT

Statement of Evidence on Appeal—Filed November 17, 1936

Be it Remembered that Noah Adair, Conciliation Commissioner in and for the County of San Bernardino, State of California, filed herein an accounting of moneys received and disbursed by him in the matter of the estate of Andrea Cuccia, bankrupt under Section 75 of the Bankruptcy Act, and that Bank of America National Trust and Savings Association having filed verified objections and exceptions to said account and the said Noah Adair having filed a verified answer to the said objections and exceptions and that a hearing upon the said account and the said objections and exceptions was duly had before the above entitled court, the Hon. Paul J. McCormick, presiding, on the 14th day of September, 1936, at which hearing the said Noah Adair appeared in person and by his counsel, N. C. Peters, and Bank of America National Trust and Savings Association appeared by its attorney Hugo A. Steinmeyer, and the following proceedings were had:

NOAH ADAIR, witness for Bank of America National Trust and Savings Association was sworn and testified:

Direct examination:

I am Conciliation Commissioner for San Bernardino County and was such Commissioner on August 6, 1934, and filed on behalf of Andrea Cuccia his debtor's petition under [fol. 34] Section 75 of the Bankruptcy Act on August 4,

1934. I couldn't definitely say, but I think the schedules filed with that petition were prepared in my office and they were verified before me. I believe that the document shown to me designated Referee's and Conciliation Commissioner's Docket is a correct statement of the entries made in the docket of this case in my office and in the office of D. W. Richards, Referee in Bankruptcy for San Bernardino County.

(Here was received in evidence Creditor's Exhibit No. 1, reading as follows:

EXHIBIT 1

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 23,615-M

In the Matter of ANDREA CUCCIA, Debtor

REFEREE'S AND CONCILIATION COMMISSIONER'S DOCKET

August 4, 1934. Schedules filled out and signed by Conciliation Commissioner and Debtor.

August 4, 1934. Domenica Borgia Cuccia deeded her interest in property to Andrea Cuccia, her husband.

[fol. 35] August 6, 1934. Approval of Debtors petition & Order of Reference, signed and accepted by the United States District Court.

August 29, 1934. Complaint to Foreclose Crop & Chattel Mortgage, filed by Edmund Nelson and Hugo A. Steinmeyer, attorneys for the Bank of America National Trust & Savings, together with copy of Crop & Chattel Mortgage.

September 1, 1934. Summons served by Bank of America.

September 18, 1934. First Meeting of Creditors.

September 18, 1934. Composition and/or Extension proposed and discussed.

September 21, 1934. Order of Conciliation Commissioner setting Aside Exempt property.

September 26, 1934. Order Authorizing Debtor to pay pickers. Labor for harvesting grapes from his 53 acre vineyard.

October 30, 1934. Order paying debtor $3.00 per day for 14 days. Labor on his above mentioned vineyard. Living expenses.

November 23, 1934. Proof of priority Wage Debt, filed by Tony Sciacca.

November 27, 1934. Order authorizing debtor to buy groceries for himself family, and feed for his horse.

December 20, 1934. Order authorizing debtor to buy feed for his horse.

[fol. 36] January 5, 1935. Debtors Amended Petition, Report of Conciliation Commissioner to Referee, Certificate of Conciliation Commissioner, filed with United States District Court.

January 7, 1935. Adjudication under Section 75 (s) of the Bankruptcy Act.

January 10, 1935. Notice of Dismissal, filed by Edmund Nelson & Hugo A. Steinmeyer, attorneys for the Bank of America.

January 11, 1935. Notice to Attorney for Bankrupt.

January 16, 1935. Subpœna served.

January 30, 1935. First Meeting of Creditors set for February 12, 1935.

January 31, 1935. Affidavit of mailing notice of First Creditors Meeting.

February 5, 1935. Debtors Petition for Appraisal, etc.

February 5, 1935. Petition of Debtors Attorney for Allowance of fee.

February 14, 1935. Meeting of creditors pursuant to continuance from Feb. 12, 1935. Following appearances: Mr. Cuccia, Mr. Steinmeyer for Bank of America, Mr. Eckhardt, for Bankrupt. Mr. Rich appointed to report testimony, Charles P. Locave appointed to act and sworn in as an interpreter. Mr. Cuccia sworn and examined by the attorneys. Mr. Steinmeyer filed objections and exceptions to proceedings. Mr. Adair sworn, Mr. Wayman sworn.

[fol. 37] February 14, 1935. Proof of Secured Debt filed by Bank of America, $13,821.67.

February 14, 1935. Objections and Exceptions of Bank of America to Proceedings of Debtor under Section 75 of the Bankruptcy Act.

February 16, 1935. Motion to Dismiss filed by Hugo A. Steinmeyer for Bank of America.

February 16, 1935. Points & Authorities in Support of Motion to Dismiss filed by Hugo A. Steinmeyer, for Bank of America.

February 16, 1935. Motion to Dismiss filed by Bank of America.

February , 1935. Points & Authorities in opposition to Motion to dismiss filed by Ralph W. Eckhardt, attorney for Debtor.

March 2, 1935. Affidavit of Publication Notice of first meeting.

April 16, 1935. Order of Dismissal, signed by D. W. Richards, Referee in Bankruptcy.

April 19, 1935. Notice of Entry of Order Filed by Edmund Nelson and Hugo A. Steinmeyer, attorneys for Bank of America.

April 25, 1935. Petition for Review of Order of Referee.

Copied from the Referee's Docket

June 22, 1935. Report of Referee.

June 22, 1935. Certificate of Referee for Dismissal.

June 27, 1935. Report and certificate of Referee for Dismissal mailed to Clerk.

[fol. 38] August 9, 1935. Affidavit of Mailing notice of Final Meeting.

August 17, 1935. Final meeting pursuant to notice. Case ordered dismissed subject to payment of appraisers' fees, $30.00 and Referee's fee, $4.75.

July 11, 1935. Files turned over to Noah Adair, Conciliation Commissioner.

Dated October 10, 1935.

Respectfully submitted, Hazel Kelley, Secretary to Noah Adair, Conciliation Commissioner for San Bernardino County, State of California.

STATE OF CALIFORNIA,
County of San Bernardino, ss:

I, Noah Adair, Conciliation Commissioner of the District Court of the United States for the Southern District of California, Central Division, in San Bernardino County, California, do hereby certify that the attached is a true, full and

correct copy of the papers and instruments in the debtor, Andrea Cuccia's file, in my office, care, and custody.

Dated this 10th day of October, 1935.

Noah Adair, Conciliation Commissioner for San Bernardino County, State of California.

[fol. 39] ADAIR (resuming his testimony):

This debtor in January, 1935, filed an amended petition under Section 75 (s) of the Bankruptcy Act and the proceedings were thereupon referred to D. W. Richards, Referee in Bankruptcy for San Bernardino County, and my file in the matter was turned over to Mr. Richards at that time. The matter was referred to Richards on January 7, 1935. I think I was named as trustee *by* never qualified. I would have to check to make sure of the date that the proceedings were dismissed by Referee Richards. I think I have a copy of the order in my file. I presume that I heard of the order made by Referee Richards dismissing the proceedings. I have receipts for the item shown in the account of an expenditure of $340.00 cash for labor of 20 men on the ranch for September 26, 1934. I paid the money to Mr. Cuccia and instructed him to pay the other people and take their rece-pts and bring the receipts to me. I do not know whether the money was paid in currency or by check. The bank account was in my name together with Andrea Cuccia at the American National Bank. With reference to the statement "Court Order Issued", I issued the court order. That $340.00 and the next item, $59.33, makes up this order that I signed for $402.39.

(Here was received in evidence Creditor's Exhibit No. 2, the same reading as follows:

[fol. 40] EXHIBIT 2

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 23615-M

In the Matter of ANDREA CUCCIA, Debtor

IN PROCEEDINGS FOR A COMPOSITION OR EXTENSION UNDER SECTION 75

Before Noah Adair, Conciliation Commissioner of San Bernardino County, California: To whom the above matter was referred:

Comes the above named debtor represents that he is the owner of fifty-three (53) acres of land which is set to grapes and that since said debtor filed his petition under Section 75 of the Bankruptcy Act, that it has been necessary to harvest said grapes.

That he is indebted to the parties hereinafter mentioned, for their labor and he hereby petitions that he be allowed to use $402.39 to pay for said labor as follows:

Cosme Viquiu	$11.91
Frank Cuccia	47.50
Tilo A. Gallardo	5.96
Ramona Garsia	5.40
Maria Leyano	11.01
Frank Diaz	7.26
Don Cacciatore	39.25
[fol. 41] Jose M. Ganes	19.68
Leo Salais	19.98
Felipe Granados	11.28
Joe Castellano	48.30
Ynez Leiva	4.68
Bartola Urtiaga	8.88
Sara Valanzuela	14.67
Salome Alemaro	20.76
Joe Valadez	6.54
P. Guidera	47.50
John Urquizu	12.50
Tony Torres	14.00
Rosarro Barreras	45.33
Total	$402.39

Andrea Cuccia, Debtor.

I, the undersigned, Noah Adair, Conciliation Commissioner for San Bernardino County, California, to whom the above matter was referred, hereby approve the above petition and direct that said labor be paid out of the funds now available and deposited in the American National Bank.

—— ——, Conciliation Commissioner of San Bernardino County, California.

[fol. 42] (Here was received in evidence Creditors Exhibit No. 3, the same reading as follows:

EXHIBIT 3

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 23,615-M

In the Matter of ANDREA CUCCIA, Debtor

IN PROCEEDINGS FOR A COMPOSITION OR EXTENSION UNDER SECTION 75

Before Noah Adair, Conciliation Commissioner of San Bernardino County, California; To whom the above matter was referred;

Comes the above named debtor and represents that he is in need of money to buy feed for a horse which he estimates at about $10.00 and that he has no money to buy food for himself and family. He asks that $10.00 be allowed for the purpose of buying groceries.

Andrea Cuccia, Debtor.

I, the undersigned, Noah Adair, Conciliation Commissioner for San Bernardino County, California, to whom the above matter was referred, hereby approves the above petition and the same is hereby ordered.

Noah Adair, Conciliation Commissioner for San Bernardino County, State of California.

[fol. 43] ADAIR (resuming his testimony):

I hardly think that I have any other orders for expenditures on this account. I think that probably the expenditure on January 22, 1935, was after these proceedings had been removed from my jurisdiction. I think it is correct that all of the remaining expenditures were made after these proceedings had been transferred to Mr. Richards, Referee in Bankruptcy. I did not secure any order from the United States District Court for the disbursement of any of those funds. I did not secure any order signed by D. W. Richards, Referee in Bankruptcy, except to the extent that he O. K.'d

and initialed each one of the checks. No notice was given to any creditor of the fact that the petition for the expenditure of money had been filed and that an order was to be made and no notice was given to any creditor after the order was made. No notice was given to the Bank of America that I remember of.

(Here was received in evidence Creditors Exhibit No. 4, the same reading as follows:

[fol. 44] EXHIBIT 4

(Copy)

Los Angeles Main Office

Legal Dept.

Los Angeles, California, November 2, 1934.

Mr. Noah Adair, Conciliation Commissioner, 315 Court Street, San Bernardino, California

In re Andrea Cuccia, Debtor

No. 23615-M

DEAR SIR:

In the above matter on August 4, 1934, Andrea Cuccia filed his petition under Section 75 of the Bankruptcy Act. The first meeting of creditors was held on September 18, 1934 and continued to October 16, 1934.

We are advised that neither at the original meeting nor at the continued meeting was any extension proposal or offer of compromise made by the debtor.

[fol. 45] We call your attention to the last paragraph of rule 78 of the United States District Court Rules, which requires that unless a debtor filing a petition under Section 74 of the Bankruptcy Act files at the first meeting of creditors his offer in writing with full details and particulars that he shall immediately be adjudged a bankrupt and further proceedings shall be taken under the Bankruptcy Act.

While this rule, to our knowledge, has not been applied to petitions filed under Section 75 of the Bankruptcy Act we are satisfied that the same reasons for the requirement of promptness exists.

We hereby make demand upon you that as Conciliation Commissioner you file with the United States District Court a report of the proceedings taken by you in the above matter.

Yours very truly, Hugo A. Steinmeyer, Assistant Attorney.

HAS:HEM.

cc. to H. A. Chandler, Asst. Vice President, District No. 5, L. A. M. O.

cc. to C. A. Warren, Manager, Ontario Branch.

[fol. 46] (Here was received in evidence Creditors Exhibit No. 5, the same reading as follows:

EXHIBIT 5

(Copy)

San Bernardino, Calif., November 6, 1934.

Bank of America, Main Office, Los Angeles, California.

Attention Mr. Hugo A. Steinmeyer

Re Andreas Cuccia No. 23,615-M

DEAR SIR:

In answer to your letter of November 2, 1934, desire to say that it would be premature at this time to file a report on this matter.

Most respectfully, (Signed) Noah Adair, Conciliation Commissioner for San Bernardino County, California.

NA:HK.

[fol. 47] Cross-examination.

By Mr. Peters:

The amount paid to the debtor does not cover any more than the actual value of the services rendered in taking care of the vineyard. I paid no more than actual common

wages for the work done during that period and used the scale that was paid for such labor at that time. The amount paid for feed for the horse was on the same scale as if I had paid for the work of the horse.

With reference to the item of April 19, 1935, to Joe E. Rich, court reporter, the request for the reporter was made by Mr. Steinmeyer and he conducted nearly all of the examination during the time that I was present. The item of January 22 to D. W. Richards, indemnity fee under Section 75 (s), $18.25, covers his demand for costs for the first meeting of creditors. The amount had to be paid before the first meeting could be called or would be called. The item of May 11 for sulphur for the grapes was used in taking care of the vineyard. All of the money was paid out through checks from the United States depository and all payments were authorized and requested to be made by D. W. Richards after he took charge. The grove was properly cared for during the year following my taking charge.

By the Court:

Cuccia first filed a petition under Section 75 and then later asked to file under subdivision (s) of Section 75. During the time that the proceeding was pending under Section 75 I picked and sold the grapes on the vineyard and collected the money for it and that is the money in [fol. 48] question. I paid for the picking of the grapes $403.00 or $402.00, whatever it is, and advanced money for the care and upkeep of the vineyard. I was consulted about the number of men who would be necessary on the property and was familiar with the requirements of conserving ranch property and did not allow any more labor to be employed upon the ranch than in my judgment was reasonably necessary to conserve the property for the benefit of whomever might own it. The property was 53 acres of vineyard. The grapes mature at certain times and in order to mature at those times they have to be properly cultivated, tended to and then picked at particular times in order that they may be marketed and anyone, whether it be a lien claimant or any other property owner holding a proprietary interest in that vineyard, would have to conserve the estate for its benefit and that is exactly what I did.

The order of adjudication and reference under Section 75 (s) of the Bankruptcy Act was January 7, 1935, and

that was under the first amendment of subdivision (s) of Section 75 and afterwards there was a reinstatement in October of 1935. The expenses for labor, etc., were incurred between September 28, 1934, and June 1, 1935. D. W. Richards, referee in bankruptcy, asked that I pay the attorney $50.00. When this matter was referred to D. W. Richards, as referee, I wanted him to take the money I had on hand and become the custodian of it. He asked me to keep the money and said he would trust me in the expenditure of the money while it was under him and that he would O. K. the checks, so all the checks that were written after it went to D. W. Richards were O. K.'d by him and I wrote the checks at his request. I had nothing [fol. 49] to do with the appointment of Eckhardt as attorney or with his designation as the attorney in the matter. He might have acted for other parties but I don't think he had acted before me for Andrea Cuccia.

I paid the charge of Joseph E. Rich, court reporter, $22.50, on April 19, 1935, at the request of Mr. Richards. Mr. Rich was a reporter in Referee Richards court on that particular occasion. Mr. Rich was not the regular reporter in the Referee's court. Mr. Richards ordered the money paid to Joseph Rich and I paid the money out of the funds held as Conciliation Commissioner. I had ascertained that Rich had performed services as a court reporter in reporting proceedings before the Referee.

The items subsequent to April 19, 1935, were for 37 days work of hired men, $111.00. Then on May 11, 1935, Andrea Cuccia, sulphur for grapes, $60.00, and labor for two men working in grapes $30.00, were all paid for the care and upkeep of the vineyard and labor performed. I did not derive any benefit myself in any way from any of those expenditures nor was there any agreement or understanding that I was to receive any part of the money and I haven't retained any part of the money nor received any benefit from any part of the money which has been shown disbursed in these various disbursements.

Redirect examination.

By Creditor:

There was not any order filed in the proceedings for the expenditure of any of these moneys after the appointment of Mr. Richards on January 7, 1935. When I said that

Mr. Richards O. K.'d the checks, I mean that after we [fol. 50] discussed it together we came to the conclusion that it should be done and he told me to go ahead and do it. Then I wrote the checks and signed them and then he O. K.'d them. He wrote O. K. on the checks and signed his initials underneath the O. K. Just "O. K. D. W. R." Although the transcript shows that the Referee had signed a dismissal of these proceedings on April 16, 1935, these items were earned by the people who performed the services prior to the dismissal. I did not see any order signed by Referee Richards and filed in the proceedings. He O. K.'d the checks. I think, that he O. K.'d the checks after he had signed the dismissal. I do not have the checks with me. I think they are in the American National Bank. They are, however, for services that had been rendered before Richards dismissed the case and before Richards as Referee in Bankruptcy.

(Here was received in evidence Creditors Exhibit No. 6, the same reading as follows:

EXHIBIT 6

Crop and Chattel Mortgage

This Mortgage, made this 13th day of April 1933, by Andrea Cuccia and Minni Cuccia, husband and wife, by occupation Farmer, mortgagor (it is distinctly understood that the word "mortgagor" referring to the mortgagor, as used herein, is intended to and does include the masculine, feminine and neuter genders and the singular and plural numbers), to Bank of America National Trust and Savings Association, a National Banking Association, duly organized and existing under and by virtue of the laws of the United States of America, mortgagee,

[fol. 51] Witnesseth: That said mortgagor does hereby mortgage to the said mortgagee all the following described crops and personal property situated in the County of San Bernardino State of California, to-wit:

All crops of whatsoever kind or character, including that certain crop of Grapes of all varieties, now standing, planted or growing, or that may during the years 1933 and 1934 be planted or grown, or that may be planted or grown

prior to the payment in full of the indebtedness secured by this mortgage, on the land and premises situated in the County of San Bernardino, State of California, and described as follows, to-wit:

The North one-half of the North one-third of the West one-half of Section sixteen (16), Township one (1) South, Range six (6) West. San Bernardino Base and Meridian, in the County of San Bernardino, State of California, according to Government survey thereof. Saving and Excepting therefrom, the South half (S. ½) of that portion of the North half (N. ½) of the north one third (N. ⅓) of the west half (W. ½) of said section 16, described as follows: Beginning at a point where is set a three fourths inch iron pipe set on a paved road known as Etiwanda Road, being set for N. W. corner of Section 16, Twp. 1, South Rge. 6, West, San Bernardino base and meridian, thence north 88° 30′, east 214.10 feet to a point, thence at right angles in a southerly direction 366.55 feet to a point, thence at right angles 214.10 to a point on the line of Etiwanda Road; thence at right angles and along the line of Etiwanda Road 366.55 feet to the point of beginning, containing 1.79 acres more or less.

[fol. 52] And also the following described personal property, together with the increase thereof, if any, situated in or on said hereinbefore described real property, to-wit:

(all of said crops and personal property being owned by, and in the possession of said mortgagor), as security for the payment of said mortgagee of the sum of Twelve thousand two hundred and seventy five Dollars,

RE552.

Installment Note

(Principal Payable in Installments—Interest Separately)

$11,850.00. Ontario, California. Dec. 5, 1930.

For Value Received I promise to pay in United States Gold Coin of the present standard of weight, fineness and value to the order of

Bank of America

National Trust & Savings Association

in its offices in this city the principal sum of Eleven Thousand Eight Hundred Fifty and 00/100 Dollars ($11,850.00)

with interest from date on deferred balances until paid at the rate of seven per cent per annum, payable quarterly. Said principal sum and said interest payable as follows: Five Hundred and 00/100 Dollars, ($500.00), or more and said interest, on the 5th. day of January 1931, and Five Hundred and 00/100 Dollars ($500.00), or more and said interest on the 5th day of [each and every]* February and [thereafter until the]* Ten Thousand Eight Hundred and Fifty dollars on the 5th day of June 1931, [19]* on which said date the entire balance of principal [fol. 53] and interest then unpaid shall become due and payable.

Should the interest not be so paid it shall become part of the principal and thereafter bear like interest as the principal. Should default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States, of the present standard of weight, fineness and value.

A Deed of Trust Secures the indebtedness evidenced by this note.

Andrea Cuccia. Minni Borgia Cuccia.

Interest Paid

Date Paid	Amount	Paid To
4-2-32	31.16	3-5-32
9-19-32	16.80	9-19-32

For Value Received, I hereby guarantee payment of the within obligation and all renewals or extensions thereof, and I hereby waive presentation, demand, protest, notice of protest and notice of non-payment.

No. 3422

$425.00 Due Sept. 1, 1931.

Ontario, Calif., April 10, 1931.

On Sept. 1, 1931, for Value Received, I promise to pay, in United States gold coin of the present standard of [fol. 54] weight, fineness and value, to the order of the

[* Matter enclosed in brackets, struck out in copy.]

Bank of America

National Trust & Savings Association

at its office in this city—Four Hundred Twenty Five—Dollars, with interest from date at the rate of 8 per cent per annum until paid. Payable on Sept. 1, 1931, and demand thereafter in like gold coin, and in addition thereto, in the event of suit to enforce payment of this note, such additional sum as attorneys' fees as the court may adjudge reasonable.

Andrea Cuccia.

Address: Etiwanda Calif.
Telephone: ——.

As collateral security for the payment of the above note and interest, and of any expenses, including attorneys' fees, that may be expended in collection of said note and interest, the undersigned hereby assigns and transfers to and deposits with the aforesaid Bank the following described property to-wit: (1) one share Etiwanda Water Company Stock—Cert. #1492 which property the undersigned, in the event of its deterioration or its falling in cash market value or on default in payment of the above note at maturity, hereby authorizes and empowers the said bank, its successors or assigns, at its or their option, to [fol. 55] sell, in whole or in part, without any previous demand on or notice to the undersigned, through Brokers' Board or at public or private sale, and without advertisement, with the right of said bank, its successors or assigns, to become purchaser at any such sale of the whole or any part of such collateral, and from the proceeds derived from any such sale to pay at maturity the principal and interest of the above note and all charges including the legal expenses and costs of such sale and the balance, if any, to the undersigned or order. Said bank may assign or transfer the above note and in case of such assignment or transfer said collateral security shall also be transferred and the transferee shall have the same rights and powers with reference to this note and the collateral transferred therewith as are hereby given to or as may be otherwise possessed by said bank. The word "undersigned" as herein used, shall indicate the depositor of the above security, and shall include the singular and plural numbers.

Upon payment of said promissory note and interest and of all other indebtedness of the undersigned to said bank and costs and expenses and attorneys' fees, this agreement shall terminate and any collateral security held hereunder shall be returned to the undersigned.

Andrea Cuccia.

As per Copies Hereto Attached

($—) in gold coin of the United States of America of the present standard of weight, fineness, and value. Said Notes secured by Trust Deed; this mortgage being as additional security thereto and also as security for the payment by said mortgagor to mortgagee of all sums hereafter [fol. 56] advanced by said mortgagee to said mortgagor; also as security for the discharge and performance of all obligations and promises by said mortgagor herein contained, and all other past, present or future demands or claims of any kind or character of said mortgagee against said mortgagor whether absolute or contingent and whether due or not due; and also as security for the payment of all other moneys that may become due to said mortgagee from said mortgagor under the terms of this mortgage.

Said mortgagor hereby declares and hereby warrants to said mortgagee that said mortgagor is the absolute owner and in possession of all said mortgaged property hereinabove described, and that the said property is free and clear of all liens, encumbrances and adverse claims whatsoever.

And as further security for the payment, by said mortgagor to said mortgagee, of the note or notes hereinabove referred to and all indebtedness and obligations secured hereby, said mortgagor hereby mortgages to the mortgagee herein named all of the right, title and interest of said mortgagor in and to the lot, piece or parcel of land hereinbefore described upon which said mortgaged crop is to be grown or upon which said personal property is situated.

Said mortgagor promises and agrees: to pay the principal sum of said promissory note or notes, together with interest thereon, at the time and in the manner therein provided, and to pay when due all sums secured hereby, and to perform each and every covenant and condition of this mortgage; during the continuance hereof to properly care for and keep said mortgaged property herein described in [fol. 57] first class condition, order and repair and insured

against all loss or damage by fire and such other casualties as may be designated by the mortgagee and in an amount required by the mortgagee, not to exceed, however, the value of said mortgaged property, or the amount due the mortgagee, in some insurance company, or companies, to be approved by the mortgagee, the policies of which insurance shall be payable in case of loss to the mortgagee and shall be delivered to and held by the mortgagee as security; to pay all taxes, liens or assessments of whatsoever kind or description that may be levied against said mortgaged property, or any part thereof, when the same shall become due and prior to the time when the same shall become delinquent; to comply and use said mortgaged property and each and every part thereof in strict conformity with all laws, ordinances, regulations and statutes with reference to the use, operation and registration thereof; not to remove, or permit to be removed, any part of said property from the premises on which said property is now situated, without the written consent of said mortgagee, or to sell or to attempt to sell, or further mortgage the said property without such consent, and to immediately notify the mortgagee in the event of any damage to said property from any cause whatsoever; that all additions, accretions, repairs to, improvements and increases of said mortgaged property shall immediately become subject to all the provisions of this mortgage; to attend to, care for, cultivate, irrigate and protect said crop or crops hereinabove mentioned and described, in a good, farmer-like manner, and according to the most approved methods of farming, until the same shall be ready for harvesting, and then to harvest and prepare said crop or crops for market, and [fol. 58] when said crop or crops are so prepared, to deliver said crop or crops to the mortgagee, who may sell and dispose of the said crops at the then market price and apply the proceeds of said sale toward payment of the notes and obligations secured thereby, and that the lien of this mortgage shall attach to said crop or crops after the same have been severed and until the amounts secured hereby have been paid in full; to keep the premises on which said crops are grown free from dandelion and other noxious weeds, or grasses, and to keep said premises where said crops are grown properly cultivated, and to protect

said crops from damage by squirrels, insects and other pests detrimental thereto; and also to keep the fences surrounding said premises, and all other improvements on said premises, in good condition of repair; to take care of and protect the crops while growing and to pick, clean, pack and prepare the same for market and to deliver the same unto the possession of said mortgagee; to permit the mortgagee at any time during the continuance hereof to enter upon the premises on which said property is situated and examine said property and, upon demand of said mortgagee, to make a written report to said mortgagee concerning the mortgaged property; to pay the mortgagee, or its successor, in the event suit be brought to foreclose this mortgage, an attorney fee of One Hundred Dollars ($100.00) and a further sum of five per cent (5%) of the amount due in the event that said action is prosecuted to judgment.

If the mortgagor fails to make any payment or perform any act which he is obligated to perform hereby, then the mortgagee, without demand, or notice to the mortgagor, or any successor in interest of the mortgagor, or any of [fol. 59] them, may make such payments or perform such acts and incur any liability or expend whatever amounts in its absolute discretion it may deem necessary therefore, and all sums incurred or expended by the mortgagee or its successor under the terms hereof shall immediately become due and payable by the mortgagor to the mortgagee, or its successor, when so incurred or expended and shall bear interest until paid at the rate of one per cent (1%) per month and shall be secured hereby.

If the mortgagor defaults in the performance of any covenant contained in this mortgage, or the payment of any obligation or indebtedness secured hereby, the mort--gee, without notice or demand, at any time, may take possession of said mortgaged property and repair, care for, harvest, lease or manage the said property and perfrom any act necessary to conserve the value or income thereof and to apply the proceeds in the manner as specified herein upon the sale of said property. And the mortgagee, or its successor, shall be entitled to the appointment of a receiver by a court of competent jurisdiction to assist it in performing and doing any of the acts hereinabove set

forth. All expenses incurred by the mortgagee in the taking possession of said property or in the performance of any of the acts hereinabove specified, including the expense of the appointment of a receiver, shall immediately become due and payable by the mortgagor to the mortgagee, or its successor, when so incurred, and shall bear interest at the rate of one per cent (1%) per month until paid, and shall be secured hereby.

If default is made in the prompt payment, when due, of any sums secured hereby or in the performance of any [fol. 60] promise contained herein, the mortgagee may declare all sums secured hereby immediately due and payable without demand or notice and said mortgagee may at once proceed to foreclose this mortgage by proceeding as provided for in the Code of Civil Procedure of the State of California, or it may, at its option, enter upon the premises where said mortgaged personal property may be and take possession thereof; and take such measures as to the mortgagee may be deemed necessary or proper for the care, protection or harvesting thereof and remove and/or sell and/or dispose of said mortgaged property as a pledge at either public or private sale, with or without notice (the said mortgagor hereby expressly waiving demand of performance, notice of sale and any advertisement of sale), and at said sale the mortgagee or its successor may become the purchaser and from the proceeds of sale retain all costs and charges incurred by it in the taking or sale of said property and in the care and protection thereof, including all reasonable attorney's fees incurred and may apply the balance toward the payment of all sums due said mortgagee and secured hereby and shall dispose of the surplus remaining as provided by law.

Mortgagor hereby expressly waives the provisions of Section 726 of the Code of Civil Procedure of the State of California, and agrees that mortgagee may sue to recover the indebtedness secured hereby without foreclosing this mortgage, it being understood that all remedies allowed the mortgagee under the law and under the terms of this mortgage are and shall be concurrent and cumulative.

[fol. 61] In Witness Whereof the said mortgagor has hereunto set the hand and seal of said mor-gagor the day and year first hereinabove written.

Andrea Cuccia. (Seal.) Minni Cucci. (Seal.)

STATE OF CALIFORNIA,
County of San Bernardino, ss:

Andrea Cuccia and Minni Cuccia, husband and wife, mortgagor in the foregoing mortgage named, and (Name of Officer:) C. A. Warren, (Officer's Title:) Manager, Ontario Branch, of the Bank of America National Trust and Savings Association, a corporation organized and existing and by virtue of the laws of the United States of America, the mortgagee in said mortgage named, each being duly sworn, each for himself doth depose and say: That the aforesaid mortgage is made in good faith, and without any design to hinder, delay or defraud any creditor or creditors.

Andrea Cuccia. Minni Cuccia. C. A. Warren.

Subscribed and sworn to before me this 14th day of April, 1933. J. B. Quayle, Notary Public in and for said County of San Bernardino, State of California.

[fol. 62] STATE OF CALIFORNIA,
County of San Bernardino, ss:

On this — day of April, in the year one thousand nine hundred and —, before me, J. B. Quayle, a Notary Public, in and for the County of San Bernardino, personally appeared Andrea Cuccia and Minni Cuccia, husband and wife, known to me to be the person- whose names are subscribed to the within instrument, and they duly acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my office in the said County of San Bernardino, the day and year in this certificate first above written.

J. B. Quayle, Notary Public in and for said County of San Bernardino, State of California.

Indexed (112).

When Recorded Mail to Ontario Branch Bank of America National Trust & Savings Association

Ontario

California

(Address of Branch)

Recorded Apr 15 1933 11:02 A M In Book 882 Page 272 Official Records San Bernardino County, Calif. Fulton G. Ferand County Recorder By A. R. Schultz Deputy I certify that I have correctly transcribed this document in above mentioned book M Smith Copyist M. Carroll 3.00
26

[fol. 63] Indexed 60.

Crop and Chattel Mortgage

(General Form)

Andrea Cuccia, Mortgagor,—to—Bank of America National Trust & Savings Association, Ontario, Mortgagee

Dated April 13, 1933.

Filed for record at the request of Bank of America National Trust & Savings Association 10:31 A M Book 891 O. R. Page 1 Official Records San Bernardino County, Calif. Fulton G. Ferand County Recorder By A. R. Schultz Deputy I hereby certify that I have correctly transcribed this document in above mentioned book M Smith M Carroll 3.10
28

Recross-examination.

By the Court:

My information is that in the matter pending before Referee Richards the reporter acted at the request of Mr. Steinmeyer.

[fol. 64] (Here was received in evidence, Conciliation Commissioner's Exhibit "A", reading as follows:

EXHIBIT "A"

Bank of America Trust and National Savings Association

Los Angeles Main Office

Los Angeles, California,
February 6, 1935.

Mr. D. W. Richards, Referee in Bankruptcy, San Bernardino, California.

In re Andrea Cuccia

No. 23615-M

DEAR SIR:

We have received notice of the first meeting of creditors of the above named bankrupt to be held on February 12, 1935.

We expect to appear at the meeting to examine the bankrupt and would like to have a shorthand reporter present in order to take the testimony. If it is necessary for us to make any arrangements for this other than the request will you kindly advise us.

Yours very truly, Hugo A. Steinmeyer, Assistant Attorney

HAS:F.

[fol. 65] ADAIR (resuming his testimony):

The indemnity fee of $18.25 is the amount established for San Bernardino County by the rules of court. Mr. Richards asked me to pay him that amount and it was all chargeable against this estate. I do not know how the Referee manages the expenses of his office.

Redirect examination.

By Creditor:

At the time I filed the petition and schedules for Mr. Cuccia I did not know he had previously executed a crop mortgage to the Bank of America. I don't know whether

the entry appearing on Schedule 2, at page 3, showing an indebtedness to Bank of America, Ontario, secured by deed of trust and also a chattel mortgage to Bank of America, Ontario, California, amount unknown, date unknown, no consideration, signed by deception, was within my knowledge at the time Mr. Cuccia filed his schedules. I don't know whether it is a fact that I received a copy of the summons and complaint in an action brought by the Bank of America to foreclose this crop and chattel mortgage prior to the time that I called the first meeting of creditors. The entries in the transcript of the docket of the case, showing an entry of August 29, complaint to foreclose crop and chattel mortgage, and also the entry on September 1, 1934, showing summons served by Bank of America, do not refresh my recollection as to whether or not I had notice that any crop mortgage had been executed by this debtor. I would not say that the entries in the docket are not correct. The entry was under my record and not Referee Richards. I wouldn't say the entry is incorrect because I don't know. Those records were my records though and maintained in my office and were my records of this case.

[fol. 66] STATEMENT BY THE COURT

Thereupon the court made a statement as follows:

"The Court: I don't care for any argument. In my judgment, there is no reason to discharge the Conciliation Commissioner, if his actions were in good faith and made for the purpose of conserving the estate. Someone would have had to conserve this property; otherwise it would have been wasted. There is no showing that he was improvident or that the expenses of maintaining the property were more than the bank itself would have had to pay if it had exercised any possession over the vineyard. Its lien under the chattel mortgage, assuming that the chattel mortgage is valid, which it isn't necessary to decide in this proceeding, would require, in order to preserve the lien and protect the rights of the bank, that the crop be properly attended to, cultivated, harvested and marketed. There is no showing that the bank could have done that for a less amount than the account of the Conciliation Commissioner shows that he expended. All of the items were expended for the purpose

of conserving the estate for whomever might ultimately be entitled to it, or for whoever was entitled to it. His activities were under the authority of the court, and even assuming that the position of the bank is legally correct, that the court had no authority, that is no reason to mulct the Conciliation Commissioner by imposing a surcharge upon him for attorney's expenses which were incurred in the manner stated.

The objections to the account are overruled and the account is settled and allowed."

[fol. 67] To which appellant then and there excepted.

The foregoing statement is hereby approved as being a true, complete, and properly prepared statement of the evidence on appeal, and may be approved by the Court as such.

Dated this 16th day of November, 1936.

Louis Ferrari, Edmund Nelson, Hugo A. Steinmeyer, Attorneys for Appellant, Bank of America National Trust and Savings Association. N. C. Peters, Attorneys for Appellee, Noah Adair.

ORDER APPROVING STATEMENT OF EVIDENCE

The foregoing statement is hereby approved as being a true, complete, and properly prepared statement of the evidence on appeal.

Dated this 17th day of November, 1936.

Paul J. McCormick, Judge.

[File endorsement omitted.]

[fol. 68] IN UNITED STATES CIRCUIT COURT OF APPEALS

PETITION FOR ALLOWANCE OF APPEAL—Filed October 5, 1936

To the United States Circuit Court of Appeals for the Ninth Circuit and to the Honorable Judges Thereof:

The undersigned, Bank of America National Trust and Savings Association, a national banking association, feeling itself aggrieved by a certain order of the United States District Court for the Southern District of California, Cen-

tral Division, made and entered on the 14th day of September, 1936, wherein the said District Court overruled certain objections and exceptions of the undersigned to an accounting filed in the said proceedings by Noah Adair, Conciliation Commissioner in and for the County of San Bernardino, State of California, and settled and allowed the said accounting, does hereby petition this Honorable Court for the allowance of an appeal from the said order and from the whole thereof to the United States Circuit Court of Appeals for the Ninth Circuit and in support of its petition the undersigned alleges:

I

That on December 5, 1930, Andrea Cuccia executed his promissory note for the sum of $11,850.00 to petitioner, which note was secured by a deed of trust upon real property situated in the County of San Bernardino, State of California; that thereafter on April 13, 1933, as additional security for the indebtedness evidenced by the said promissory note Andrea Cuccia executed and delivered to petitioner a crop and chattel mortgage upon all the crops growing upon the said property during the years 1933 and 1934 [fol. 69] and thereafter until the said indebtedness was paid; that the said mortgage was duly acknowledged and recorded in the manner required by the laws of the State of California.

II

That on August 4, 1934, Andrea Cuccia filed a petition under Section 75 of the Bankruptcy Act in the United States District Court for the Southern District of California, Central Division, being proceeding No. 23615-M upon the records and files of the said Court; that said Andrea Cuccia failed to make a composition or extension with his creditors pursuant to the provisions of the said Statute and thereafter on January 7, 1935, filed an amended petition under Subsection (s) of Section 75 of the Bankruptcy Act and was thereupon adjudicated a bankrupt and the proceedings thereunder were duly referred to D. W. Richards, Referee in Bankruptcy in and for the County of San Bernardino, State of California; that thereafter the said proceedings were dismissed on October 14, 1935, by an order of the said District Court.

III

That during the month of September, 1934, Noah Adair, Conciliation Commissioner in and for the County of San Bernardino, took possession of and sold the crop of grapes growing upon the real property of the said Andrea Cuccia, which grapes were subject to the crop mortgage of petitioner, and received the sum of $1,437.37 upon the sale thereof; that said funds were deposited by the Conciliation Commissioner in a bank account in the name of himself and the debtor.

[fol. 70] IV

That thereafter, pursuant to an order of the said District Court made upon the application of petitioner, Noah Adair filed an accounting of the moneys received by him from the sale of the said crops and disbursed by him, which accounting was in words and figures as follows:

"In the District Court of the United States for the Southern District of California, Central Division

No. 23615-M

In the Matter of Andrea Cuccia, Debtor

September 26, 1934. An account in the name of Andrea Cuccia and Noah Adair was opened with the American National Bank, San Bernardino, California, and a deposite of $1437.37 was made	$1,437.37
September 26, 1934. Cash, labor for 20 men on ranch. Court order issued	340.00
October 1, 1934. Andrea Cuccia	59.33
October 30, 1934. Andrea Cuccia, 14 days labor court order issued	42.00
November 27, 1934. Andrew Cuccia, $15 living expense $20 filing fee under 75 (s) and $20 feed for horse. Court order	55.00
[fol. 71] December 20, 1934. Andrea Cuccia, $10.00 feed for horse and $10 living expense	20.00
January 22, 1935. Andrea Cuccia, $20, and labor on grove $144.00	164.00
January 22, 1935. D. W. Richards indemnity fee under Section 75 (s)	18.25

February 1, 1935. Andrea Cuccia, labor, 8 men, 11 day- each	264.00
February 15, 1935. Andrea Cuccia, labor	90.00
March 15, 1935. Andrea Cuccia, $45 labor; $20 hay and $10 living expense	75.00
April 19, 1935. Jos. E. Rich, Court reporter	22.50
April 19, 1935. Ralph W. Eckhardt, attorneys fee	50.00
April 19, 1935. Andrea Cuccia, 37 days work of hired men	111.00
May 11, 1935. Andrea Cuccia, su-pher for grapes	60.00
June 1, 1935. Andrea Cuccia, labor for two men working in grapes	30.00
Total	$1,401.08
Tax, etc.	.60
	$1,401.68

Balance in bank to date, $35.69.

Noah Adair."

[fol. 72]

V

That petitioner filed verified objections and exceptions to the said account in which it alleged in substance that the petitioner was the holder of a crop mortgage upon the said crops grown upon the real property of the debtor during the year 1934 and that the crops received by the Conciliation Commissioner were subject to the lien of the crop mortgage held by petitioner and that petitioner had no notice of any order made with respect to the disposition of any of the crop moneys that the orders referred to in the accounting were invalid.

VI

That Noah Adair, as Conciliation Commissioner, filed a verified answer to the objections and exceptions of petitioner to the said account in which he alleged in substance that the moneys expended by him were absolutely necessary for the care of the debtor's property and to provide for his living expenses and that said other expenditures were approved by D. W. Richards, Referee in Bankruptcy in and for the County of San Bernardino; said answer also alleged that this petitioner had not objected to the use of the pro-

ceeds of said crop in the care of the vineyard and expenses of administration and that this petitioner had never proven its claim upon the said crop mortgage because it had never filed the original or a copy of the said mortgage with its proof of secured debt in the bankruptcy proceedings.

VII

That a hearing was had on the said account and the objections thereto and the answer of Noah Adair, as Conciliation Commissioner to the objections on the 14th day of September, 1936, by the said United States District Court for [fol. 73] the Southern District of California, Central Division, and the said court thereupon made its order as follows:

"It is Ordered that the objections and exceptions to the account be overruled and that the same be settled and allowed. Exception noted in behalf of creditor."

Wherefore, the undersigned feeling aggrieved by the said order prays that an appeal therefrom may be allowed and that a citation issue, as provided by law, directed to Noah Adair citing and admonishing him to appear before the United States Circuit Court of Appeals for the Ninth Circuit to show cause, if any there be, why the errors in the above mentioned order should not be corrected and speedy justice should not be done to the parties in that behalf and that a transcript of the record and evidence of the proceedings in which the above mentioned order was made be sent, duly authenticated, to the said Circuit Court of Appeals pursuant to the rules of said Court in such cases made and provided.

Dated this 3rd day of October, 1936.

Bank of America National Trust and Savings Association, by A. G. Maurer, Vice President. Louis Ferrari, Edmund Nelson, Hugo A. Steinmeyer, Attorneys for Appellant.

[fol. 74] *Duly sworn to by A. G. Maurer. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 75] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed October 5, 1936

Comes now Bank of America National Trust and Savings Association and in support of its Petition for Allowance of Appeal from the order settling the account of Noah Adair, specifies the following errors in the said order:

1. The court erred in settling and allowing the said account for each of the following reasons:

(a) The proceeds of the sale of the crop belonged to the holder of the crop mortgage;

[fol. 76] (b) The Conciliation Commissioner was not a trustee in bankruptcy and had no right to the possession of the funds or to expend any part thereof;

(c) After the adjudication in bankruptcy and reference to referee, the Conciliation Commissioner had no jurisdiction over the proceedings;

(d) No trustee in bankruptcy was ever appointed;

(e) No valid order for the expenditure of any of the funds was ever made.

2. The court erred in overruling the objections and exceptions filed by petitioner to the said account.

Dated this 3rd of October, 1936.

Louis Ferrari, Edmund Nelson, Hugo A. Steinmeyer, Attorneys for Appellant.

[File endorsements omitted.]

[fol. 77] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER ALLOWING APPEAL—November 2, 1936

Upon consideration of the petition of Bank of America National Trust and Savings Association, a national bank-

ing association, filed October 5, 1936, for allowance of appeal herein under section 24b of the Bankruptcy Act, and of the assignments of error in support thereof, filed therewith, and by direction of the court,

[fol. 78] It is Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the District Court of the United States for the Southern District of California, Central Division, entered on the 14th day of September, 1936, be, and hereby is allowed, conditioned upon the giving of a cost bond in the sum of Two Hundred and Fifty Dollars ($250.00) with good and sufficient security within ten days from date.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this second day of November, A. D. 1936.

Paul P. O'Brien, Clerk, U. S. Circuit Court of Appeals for the Ninth *District*. (Seal.)

[Endorsed:] Due service and receipt of a copy of the within Order Allowing Appeal, together with a copy of the Petition for Allowance of Appeal, Assignment of Errors and Citation on Appeal is hereby acknowledged this 12 day of November, 1936. N. C. Peters attorney for appellee. Filed R. S. Zimmerman Clerk at 2 min. past 5 o'clock, Nov. 16, 1936 P. M. by R. B. Clifton, Deputy Clerk.

[fol. 79] In United States Circuit Court of Appeals

Notice of Filing Bond for Costs on Appeal

To Noah Adair and to N. C. Peters, His Attorney:

You, and Each of You, Will Please Take Notice that the bond for costs on appeal herein was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on November 6, 1936, duly executed and given by Fidelity and Deposit Company of Maryland.

Dated November 6, 1936.

Louis Ferrari, Edmund Nelson, Hugo A. Steinmeyer, Attorneys for Appellant.

[Endorsed:] Received copy of the within Notice of Filing Bond for Costs on Appeal this 12 day of November, 1936. N. C. Peters, attorney for appellee, Noah Adair. Filed R. S. Zimmerman Clerk at 1 min. past 5 o'clock Nov. 16, 1936 P. M. by R. B. Clifton, Deputy Clerk.

[fols. 80] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR RECORD

To the Clerk of the Above Entitled Court:

SIR:

Please prepare a certified transcript of the record in the above entitled matter including the following papers, documents and orders:

1. Debtor's Petition, Summary of Schedules, Page 3 of Schedule A-2 and Oath to Schedule A on page 6.
2. Petition for Order Directing Accounting.
3. Order Directing Accounting.
4. Account.
5. Objections and Exceptions to Account.
6. Conciliation Commissioner's Answer to Objections to Account.
7. Minute Order of the Hon. Paul J. McCormick, dated September 14, 1936.
8. Assignment of Errors.
9. Petition for Allowance of Appeal in the United States Circuit Court of Appeals for the Ninth Circuit.
10. Order Allowing Appeal made November 2, 1936, by the United States Circuit Court of Appeals for the Ninth Circuit.
11. Citation on Appeal.

12. Notice of filing Bond for Costs on Appeal.

13. Clerk's Certificate.

14. A statement of evidence that shall be approved herein and the order approving the statement of evidence and any stipulation for settlement of the statement of evidence that may be filed.

15. This Praecipe.

16. Please omit captions from all papers except the Petition for Order Directing Accounting and the Order Allowing Appeal.

17. Please omit all marks on the backs of papers except filing marks and admissions of service.

Dated: November 6, 1936.

LOUIS FERRARI
EDMUND NELSON
HUGO A. STEINMEYER
Attorneys for Appellant, Bank of America National Trust and Savings Association.

[Endorsed]: Received copy of the within Praecipe this 12 day of November, 1936 N. C. Peters, attorney for appellee, Noah Adair. Filed R. S. Zimmerman Clerk at 1 min. past 5 o'clock Nov. 16, 1936 P. M. by R. B. Clifton, Deputy Clerk.

[Title of Court and Cause.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume contatining 81 pages, numbered from 1 to 81 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; debtor's petition in proceedings under Section 75 of the Bankruptcy Act, omitting all schedule A except page 3 and oath to schedule A; petition for order directing accounting; order directing accounting; account; objections and exceptions to account; conciliation commissioner's answer to objection to account; order of September 14, 1936; statement of evidence; petition for appeal; assignment of errors and order allowing appeal in the United States Circuit Court of Appeals; notice of filing bond for costs on appeal, and praecipe.

I do Further Certify that the amount paid for printing the foregoing record on appeal is $97.45 and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to $12.95 and that said amount has been paid me by the appellant herein.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this first day of December, in the year of Our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the One Hundred and Sixty-first.

[Seal] R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By EDMUND L. SMITH,

Deputy.

[Endorsed]: Printed Transcript of Record. Filed Dec. 2, 1936. Paul P. O'Brien, Clerk.

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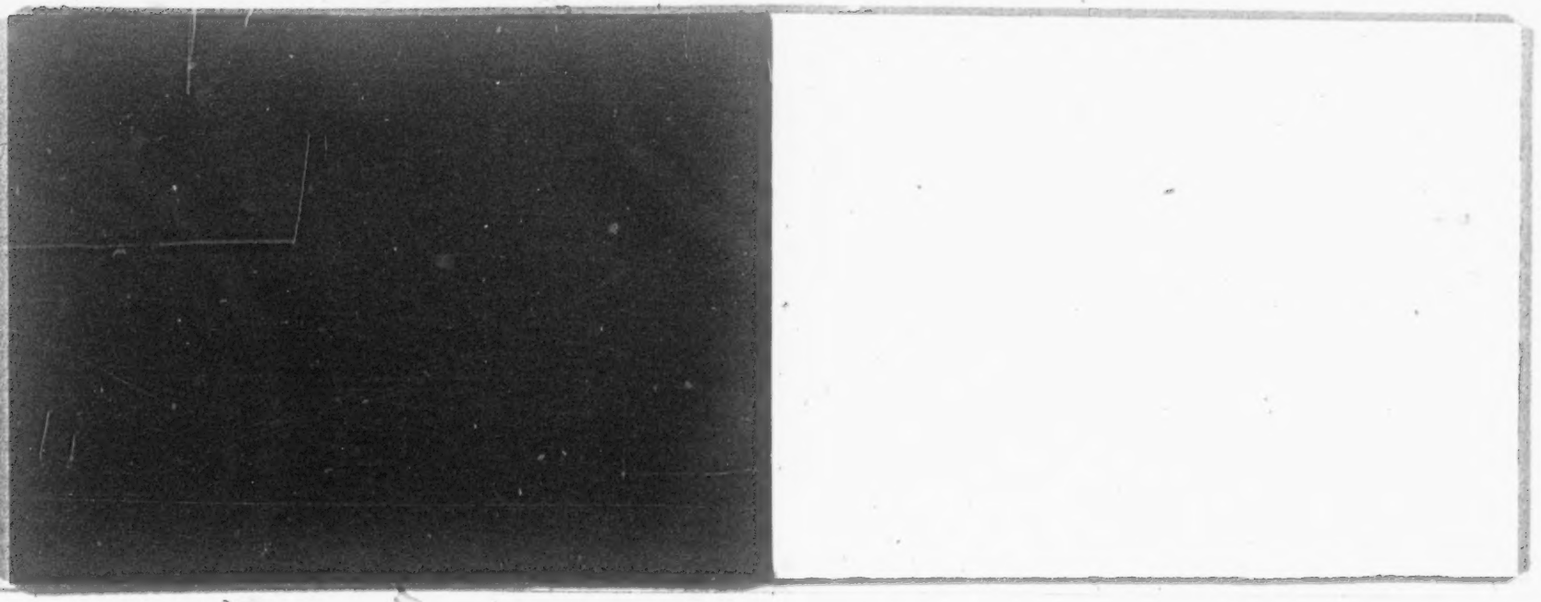

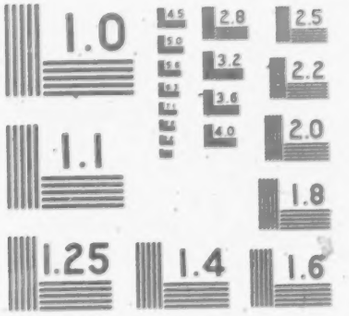

No. 8350

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

BANK OF AMERICA, N. T. & S. A.,
Appellant,

vs.

NOAH ADAIR,
Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

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PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Friday, April 23, 1937.

Before: Wilbur, Garrecht and Mathews, Circuit Judges.

[Title of Cause—No. 8350.]

ORDER OF SUBMISSION.

Ordered appeal in above cause argued by Mr. Hugo A. Steinmeyer, counsel for appellant, and submitted on brief on file on behalf of appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Monday, June 7, 1937.

Before: Wilbur, Denman and Mathews, Circuit Judges.

[Title of Cause—No. 8350.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Court and Cause.]

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

OPINION.

Before Wilbur, Garrecht and Mathews, Circuit Judges.

Mathews, Circuit Judge:

This appeal is from an order settling and allowing an account rendered by appellee in a proceeding[1] under §75 of the Bankruptcy Act (11 U. S. C. A. §203).[2]

Appellee is a conciliation commissioner for San Bernardino County, California, appointed under and pursuant to subsection (a) of §75 supra.[3] His

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[1]A detailed history of this proceeding will be found in Bank of America National Trust & Savings Ass'n v. Cuccia (C. C. A. 9),..... F.(2d) ....., decided May 4, 1937.

[2]Section 75, comprising subsections (a) to (r), inclusive, was added to the Bankruptcy Act by the Act of March 3, 1933, c. 204, 47 Stat. 1470-1473. Subsections (a) and (b) were amended by the Act of June 7, 1934, c. 424, §§8 and 9, 48 Stat. 925. Subsection (s) was added to §75 by the Frazier-Lemke Act of June 28, 1934, c. 869, 48 Stat. 1289-1291. Subsection (r) was amended by the Act of May 15, 1935, c. 114, §3, 49 Stat. 246. Subsections (b), (g), (k), (n), (p) and (s) were amended by the new Frazier-Lemke Act, August 28, 1935, c. 792, §§1-6, 49 Stat. 942, 945.

[3]Subsection (a) provides: "Within thirty days after the enactment of this Act every court of bankruptcy of which the jurisdiction or territory in-

powers and duties are, in general, those of a referee in bankruptcy. General Orders in Bankruptcy, Rule L, paragraph 11, 288 U. S. 644 (11 U. S. C. A. §53).[4] These powers and duties are specified in §§38 and 39 of the Bankruptcy Act, 30 Stat. 555 (11 U. S. C. A. §§66, 67)[5] and in Rule XII of the Gen-

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cludes a county or counties having an agricultural population . . . of five hundred or more farmers shall appoint one or more referees to be known as 'conciliation commissioners,' one such conciliation commissioner to be appointed for each county . . . ." 48 Stat. 925.

[4]By subsection (b) of §75, 47 Stat. 1470, the Supreme Court was authorized to make such general orders as it might find necessary properly to govern the administration of the office of conciliation commissioner and proceeds under §75. Pursuant to said authorization, the Supreme Court on April 17, 1933, adopted Rule L as an addition to the general orders in bankruptcy. 228 U. S. 621, 636, 641-644 (11 U. S. C. A. §53). Paragraph 11 of Rule L provides: "In so far as is consistent with the provisions of section 75 and of this general order, the conciliation commissioner shall have all the powers and duties of a referee in bankruptcy and the general orders in bankruptcy, shall apply to proceedings under said section . . . ." 288 U. S. 644.

[5]Section 38 provides: "Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to . . . (4) perform such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this Act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided . . ." 30 Stat. 555.

eral Orders in Bankruptcy, 288 U. S. 623 (11 U. S. C. A. §53).[6]

On August 4, 1934, Andrea Cuccia, a farmer residing in San Bernardino County, California, proceeding under subsection (c)[7] of §75, filed his petition stating that he was insolvent or unable to meet his debts as they matured, and that he desired to effect a composition or extension of time to pay his debts. Thereupon, pursuant to paragraph 2 of Rule L,[8] the District Judge approved the petition and referred the matter to appellee.

Cuccia did not surrender his property to appellee, but continued in possession thereof. His property consisted of a tract of land in San Bernardino County and a crop of grapes growing thereon. Ap-

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[6]Rule XII provides: "The order referring a case to a referee shall name a day upon which the bankrupt or debtor shall attend before the referee . . . And thereafter all the proceedings, except such as are required by the Act or by these general orders to be had before the judge, shall be had before the referee." 288 U. S. 623.

[7]Subsection (c) provides: "At any time within five years after this section takes effect, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition . . . of the farmer shall be accompanied by his schedules . . ." 47 Stat. 1471.

[8]Paragraph 2 provides: ". . . Upon the filing of the petition the judge shall enter an order either approving it as properly filed . . ., or dismissing it for want of jurisdiction. If the petition is approved, the case shall be referred . . . to a conciliation commissioner . . ." 288 U. S. 641.

pellant held a deed of trust, with power of sale, covering the land, and a crop mortgage[9] covering the crop, both of which were given to secure Cuccia's promissory note, held by appellant, for $11,850, with interest. Both had been duly recorded in San Bernardino County and were referred to in the schedules accompanying Cuccia's petition. Appellee, at the time this matter was referred to him and at all times thereafter, had actual as well as constructive knowledge of the deed and mortgage.

The mortgage obligated Cuccia to cultivate and harvest the crop, prepare it for market and, when so prepared, to deliver it to appellant, who, by the mortgage, was empowered to sell and dispose of the crop at the then market price and apply the proceeds to the payment of the indebtedness secured thereby. The mortgage provided that if Cuccia failed to perform any act which the mortgage obligated him to perform, appellant might perform such act and, in so doing, might expend such sums as it deemed necessary, and that all sums so expended should be immediately due and payable by Cuccia to appellant, and should be secured by the mortgage.

Prior to the filing of Cuccia's petition, his note had fallen due and had not been paid. Appellant had filed the notice required by §2924 of the Cali-

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[9]Section 2955 of the Civil Code of California provides: "Mortgages may be made upon all growing crops, including grapes and fruit . . ."

fornia Civil Code,[10] and the trustee named in the deed of trust had advertised the land for sale on October 3, 1934, but was prevented from making such sale by the filing of Cuccia's petition, which, under subsection (o)[11] of §75, precluded any such

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[10]Section 2924 provides: "... Where, in any transfer in trust ... of [any estate in real property] to secure the performance of an obligation, a power of sale is conferred upon the ... trustee, ... to be exercised after a breach of the obligation for which such ... transfer is a security, such power shall not be exercised ... until, (a) the trustee ... or beneficiary, shall first file for record, in the office of the recorder of the county wherein the ... trust property or some part thereof is situated, a notice identifying the ... deed of trust and giving the book and page where the same is recorded or a description of the ... trust property, and containing a statement that a breach of the obligation for which such ... transfer in trust is security has occurred, and of his election to sell or cause to be sold such property to satisfy the obligation; (b) not less than three months shall thereafter elapse; and (c) the ... trustee ... shall give notice of the time and place thereof ..."

[11]Subsection (o) provides: "Except upon petition made to and granted by the judge ... the following proceedings shall not be instituted, or if instituted ... shall not be maintained ... against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

"(1) Proceedings for any demand, debt, or account ...;

"(2) Proceedings for foreclosure of a mortgage on land ...;

. . . . . .

"(6) Seizure, distress, sale, or other proceedings ... under any ... chattel mortgage, ... crop payment agreement or mortgage." 47 Stat. 1472.

sale and precluded appellant from instituting or maintaining any action on Cuccia's note or any proceeding for the foreclosure or enforcement of its crop mortgage, except upon leave granted by the District Judge. No such leave appears to have been granted or applied for.

After filing his petition and after reference of this matter to appellee, Cuccia harvested the mortgaged crop above referred to and prepared it for market, but instead of being delivered to appellant, as required by the mortgage, the crop was marketed by appellee or by Cuccia under appellee's direction, and the proceeds, amounting to $1,437.37, were deposited in a bank in the name of Cuccia and appellee.

Having failed to obtain acceptance of his composition or extension proposal, Cuccia on January 7, 1935, filed an amended petition praying to be adjudged a bankrupt, pursuant to subsection (s)[12] of §75 (Frazier-Lemke Act of June 28, 1934, c. 869, 48 Stat. 1289-1291), and, on the same day, the District Judge made such adjudication and referred the matter to D. W. Richards, referee in bankruptcy. Thereafter, on October 14, 1935, this proceeding was dismissed. Bank of America National Trust & Savings Ass'n v. Cuccia (C. C. A. 9), ...F.(2d)

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[12]Subsection (s), as it then existed, provided as follows: "Any farmer failing to obtain the acceptance of a majority in number or amount of all creditors whose claims are affected by a composition or extension proposal . . . may amend his petition . . . asking to be adjudged a bankrupt . . ." 48 Stat. 1289.

....., decided May 4, 1937. With its subsequent reinstatement, we are not here concerned.

On October 17, 1935, the trustee named in the trust deed sold the land therein described and credited the proceeds on Cuccia's note. After this was done, there still remained an unpaid balance of $4,934.68. On February 6, 1936, appellant obtained an order requiring appellee to account for the proceeds of the mortgaged crop harvested by Cuccia in 1934. On February 17, 1936, appellee filed his account, showing receipt by him of $1,437.37 as proceeds of the mortgaged crop, disbursements therefrom amounting to $1,401.68, and a balance of $35.69 remaining in the bank.

Amounts shown to have been disbursed by appellee were $1,290.33 to Cuccia for labor performed and expenses incurred by Cuccia in cultivating and harvesting the mortgaged crop; $20 to Cuccia for payment of a "filing fee under §75(s);" $18.25 to D. W. Richards, Referee, as an "indemnity fee under §75(s);" $22.50 to Joseph E. Rich, court reporter, for taking testimony at a meeting of Cuccia's creditors held before the referee on February 14, 1935; $50 to Cuccia's attorney, Ralph W. Eckhardt, for services rendered to Cuccia in this proceeding; and 60 cents for "taxes, etc.," this item being otherwise unexplained. Appellant had no notice or knowledge of these disbursements.

Appellant objected to appellee's account, on the ground that appellant was entitled to the entire proceeds of the mortgaged crop, and that the disbursements made by appellee were made without

appellant's knowledge or consent and were unauthorized and improper. The District Court, after hearing, overruled appellant's objections and ordered that appellee's account be settled and allowed.

This order must be reversed. The entire proceeds of the mortgaged crop belonged to appellant. Appellant was under no obligation to cultivate or harvest the crop or to pay Cuccia for doing so. Cuccia was expressly obligated to do these things himself, at his own expense. No conciliation commissioner, trustee, referee, judge or court could impose this obligation on appellant. Appellee, therefore, could not be and was not authorized or empowered to pay Cuccia, with appellant's money, for performing this obligation. What appellee could or should have done had Cuccia failed to perform this obligation, it is unnecessary to decide, since there was, in fact, no such failure.

There was, if possible, even less excuse for disbursing appellant's money in payment of fees and costs said to have been expended or incurred in this proceeding. Cuccia and his creditors, including appellant, were, by subsection (b)[12] of §75, expressly exempted from paying any such fees or costs. Since these fees and costs were not chargeable to appel-

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[12]Subsection (b) provides: ". . . No fees, costs, or other charges shall be charged or taxed to any farmer or his creditors by any conciliation commissioner or with respect to any proceeding under this section, except as hereinbefore in this section provided . . ." 47 Stat. 1471. There is no exception covering any of the disbursements here complained of.

lant, appellee could not be and was not authorized or empowered to pay them with appellant's money.

Subsections (e)[14] and (n)[15] of §75, cited by appellee, do not warrant or justify the disbursements here complained of. In exercising the powers which these subsections confer, a court of bankruptcy may not ignore or disregard, but must recognize and protect, the rights of mortgagees. The District Court should have disallowed appellee's account and should have required appellee to pay to appellant the full sum of $1,437.37.

Order reversed and case remanded for further proceedings in conformity with this opinion.

[Endorsed]: Opinon. Filed Jun. 7, 1937. Paul P. O'Brien, Clerk.

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[14]Subsection (e) provides: "... After the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposal by the court, the court shall exercise such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors." 47 Stat. 1471.

[15]Subsection (n), as it existed when Cuccia's petition was filed, provided as follows: "The filing of a petition pleading for relief under this section shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the court, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition . . . was filed." 47 Stat. 1473.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 8350.

BANK OF AMERICA, N. T. & S. A.,

Appellant,

vs.

NOAH ADAIR,

Appellee.

DECREE.

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court in this cause be, and hereby is, reversed, with costs in favor of the appellant and against the appellee, and that this cause be, and hereby is remanded to the said District Court for further proceedings in conformity with the opinion of this court.

It is Further Ordered, Adjudged, and Decreed by this Court, that the appellant recover against the appellee for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered June 7, 1937. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

Excerpts from Proceedings of Monday, July 26, 1937.

Before: Garrecht, Denman and Mathews, Circuit Judges.

[Title of Cause—No. 8350.]

ORDER DENYING PETITION FOR REHEARING.

Upon consideration thereof, and by direction of the court, it is ordered that the petition of appellee and Amicus Curiae California Farm Debt Adjustment Commission, filed July 6, 1937, within time allowed therefor by rule of court, and by order of court, theretofore duly made, permitting such filing, for a rehearing of above cause be, and hereby is denied.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Mr. Harold Sawyer, counsel for the appellee, and good cause therefor appearing, it is ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including August 30, 1937; and in the event the petition for a writ of certiorari to be made by the appellee herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT,
United States Circuit Judge.

Dated: San Francisco, California, July 27, 1937.

[Endorsed]: Filed Jul 27 1937. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ninety-nine (99) pages, numbered from and including 1 to and including 99, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 30th day of July A. D. 1937.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 100-1a] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION FOR DIMINUTION OF RECORD—Filed November 16, 1937

It is Hereby Stipulated by and between the parties to the above entitled proceedings that there may be filed in the above entitled proceedings as part of the record for consideration of the Court the documents hereinafter described now on file in the United States Circuit Court of Appeals for the Ninth Circuit in the Matter of Bank of America National Trust and Savings Association, a national banking association, appellant, vs. Andrea Cuccia, appellee, No. 8187 upon the records and files of said court; and

It is Further Stipulated that the said documents are necessary for a proper determination by this Court of the issues raised in the above entitled proceedings for the reason that they show the proceedings taken in the District Court of the United States in and for the Southern District of California, Central Division, in the Matter of [fol. 100-1b] Andrea Cuccia, Bankrupt, by which it is contended by petitioner that the original proceedings of Andrea Cuccia were reinstated; and

It is Further Stipulated that said documents, when certified and filed with the Clerk of the Above entitled Court, may be referred to in any further brief filed by either party hereto.

The documents hereinabove referred to to be embodied in a supplemental transcript are as follows:

1. Debtor's Petition in proceedings under Section 75 of the Bankruptcy Act, No. 23615-M;

2. Amended Debtor's Petition in proceedings under Section 75, subsection (s) of the Bankruptcy Act;

3. Petition of Creditor for Order Dismissing proceedings;

4. Notice of Motion to Dismiss;

5. Order Dismissing Proceedings;

6. Petition for Leave to Refile under Section 75 of the United States Bankruptcy Act and for Restraining Order, No. 27558-M; and

7. Restraining Order and Leave to Refile under Section 75 of the Bankruptcy Court.

Dated November 5th, 1937.

William Lemke, Harold M. Sawyer, Attorneys for [fol. 100-1c] Petitioner. William C. Day, Attorney for Respondent. Louis Ferrari, Edmund Nelson, Hugo A. Steinmeyer, of Counsel for Respondent.

[fol. 100-1d] [File endorsement omitted.]

[fol. 100-1e] Names and addresses of counsel omitted in printing.

[fol. 100-2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 27558-M

In the Matter of ANDREA CUCCIA, Bankrupt

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 23615

In the Matter of ANDREA CUCCIA, Bankrupt

DEBTOR'S PETITION IN PROCEEDINGS UNDER SECTION 75 OF THE BANKRUPTCY ACT—Filed August 6, 1934

To the Honorable Judges of the District Court of the United States for the Southern District of California, Central Division:

The Petition of Andrea Cuccia of R. 1, Etiwanda, California, in the County of San Bernardino and District *of* State of California, Respectfully Represents:

That he is personally bona fide engaged primarily in the farming operations (or that the principal part of his income is derived from farming operations) as follows: vin-yard: that such farming operations occur in the County

of San Bernardino, within said judicial district; and he is insolvent (or unable to meet his debts as they mature); and that he desires to effect a composition or extension of time to pay his debts under Section 75 of the Bankruptcy Act.

That the schedule hereto annexed, marked "A" and verified by your petitioner's oath, contains a full and true state-
[fol. 100-3] ment of all his debts and so far as it is possible to ascertain the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B" and verified by your petitioner's oat-, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore Your Petitioner Prays, That his petition may be approved by the Court and proceedings had in accordance with the provisions of said section.

Andrea Cuccia, Petitioner.

Duly sworn to by Andrea Cuccia. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 100-4] IN UNITED STATES DISTRICT COURT

AMENDED DEBTOR'S PETITION IN PROCEEDINGS UNDER SECTION 75 SUB-SECTION S OF THE BANKRUPTCY ACT—Filed January 7, 1935

To the Honorable Paul J. McCormick Judge of the United States District Court for the Southern District of California:

The petition of Andrea Cuccia of Etiwanda in the County of San Bernardino and District and State of California, Occupation, Trade, or Business of — Respectfully Represents: That he is personally bona fide engaged primarily in farming operations; (or that the principal part of his income is derived from farming operations), as follows: grape vineyard; that such farming operations occur in the

county (or counties) of San Bernardino, within said judicial district; that he is insolvent (or unable to meet his debts as they mature); that he has filed a petition (official form No. 65) under Section 75 of the acts of Congress relating to bankruptcy;

1* that he has failed to obtain acceptance of a majority in number and amount of all creditors whose claims were effected by a composition or extension proposal; and that he desires to obtain the benefit of Section 75 Sub-Section S of the acts of Congress relating to Bankruptcy.

2* that he is aggrieved by the composition or extension; and that he desires to obtain the benefit of Section 75 Sub-Section S of the acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked "A", and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far — it is possible to ascertain) the names and places of residence of his cred- [fol. 100-5] itor-, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B", and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore Your Petitioner Prays, That he may be adjudged by the court to be a bankrupt in accordance with acts relating to Bankruptcy and all acts amendatory thereof.

Andrea Cuccia, Petitioner.

Duly sworn to by Andrea Cuccia. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 100-6] In United States District Court

Petition of Creditor for Order Dismissing Proceedings

To the Honorable Judges of the Above Entitled Court:

The petition of Bank of America National Trust and Savings Association respectfully shows:

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* Note.—Strike out Either Paragraph No. 1 or 2.

I

That Bank of America National Trust and Savings Association is now and has been at all times herein mentioned a national banking association duly organized and existing under and by virtue of the laws of the United States.

II

That the above named debtor is indebted to petitioner in the principal sum of $11,850.00, together with interest thereon at the rate of seven per cent per annum from September 21, 1933, to September 21, 1935, in the sum of $1,659.00 and interest thereafter accruing, evidenced by a promissory note dated December 5, 1930, due June 5, 1931, which indebtedness is secured by a deed of trust dated December 5, 1930, upon real property situated in the County of San Bernardino, State of California; that the above named debtor is likewise indebted to petitioner in the sum of approximately $1,000.00 representing advances made by petitioner in the payment of taxes, assessments and other sums in the care and preservation of the real property conveyed by the said deed of trust; that the total indebtedness of the above named debtor to petitioner is in excess of [fol. 100-7] $14,500.00 and constitutes a majority of the total indebtedness of the above named debtor as shown by his schedules on file in the above entitled proceedings; that the said indebtedness is likewise secured by a crop and chattel mortgage executed by the above named debtor, Andrea Cuccia, and Minnie Borgia Cuccia, his wife, covering all of the crops growing or to be grown upon the real property of the above named debtor in the County of San Bernardino, State of California, prior to the payment in full of the indebtedness secured by the said crop mortgage and a pledge of one share of the capital stock of the Etiwanda Water Company.

III

That on May 18, 1934, petitioner caused to be recorded in the office of the County Recorder of the County of San Bernardino, State of California, a notice of breach of the obligations secured by the said deed of trust and of its election to cause the property therein described to be sold to satisfy the said obligations, which said notice was recorded in Book 961 of Official Records at page 339.

IV

That on August 4, 1934, Andrea Cuccia, the above named debtor, filed his petition herein for an opportunity to make a composition or extension agreement with his creditors under and pursuant to section 75 of the Bankruptcy Act; that the said petition was referred to Noah Adair, Conciliation Commissioner in and for the County of San Bernardino, State of California, and the first meeting of creditors of said debtor was held on September 18, 1934, at the office of said Conciliation Commissioner.

[fol. 100-8] V

That said debtor was unable to reach any agreement of composition or extension with his creditors and thereafter on or about January 7, 1935, the said Andrea Cuccia filed an amended petition under Section 75 (s) of the Bankruptcy Act and the proceedings upon the said petition were thereupon referred to the Hon. D. W. Richards, Referee in Bankruptcy in and for the County of San Bernardino, State of California; that the first meeting of creditors of said debtor was held before the said Referee on February 12, 1935; that no trustee of the estate of the said debtor was appointed at the first meeting of creditors or at any time subsequent thereto; that petitioner herein, in the proceedings had and taken before the said Referee in Bankruptcy, filed objections in writing to the proceedings under Section 75 (s) of the Bankruptcy Act upon the ground that the said statute was unconstitutional and void and upon the further ground that the debtor had failed to file any good faith proposal for an extension or composition with his creditors at any time prior to the filing of the said amended petition under Section 75 (s) of the Bankruptcy Act; that evidence was had and taken by the said Referee upon the said objections and the matter submitted to the Referee and thereafter the Referee duly made findings of fact and conclusions of law upon the said objections and made and entered an order dismissing the above entitled proceedings; that a true and correct copy of the said order is hereto attached, marked Exhibit "A", hereby referred to and made a part hereof for all purposes; that thereafter on or about April 23, 1935, the above named debtor filed

a Petition for Review of the said order of the said Referee; that no hearing has ever been had upon the said petition for review.

[fol. 100-9]

VI

That the crop and chattel mortgage held by petitioner upon all of the crops growing upon the real property of the said debtor was a valid and proper crop mortgage upon the crops growing upon the said property during the year 1934; that during the month of October, 1934, the said debtor and Noah Adair, as Conciliation Commissioner in and for the County of San Bernardino, State of California, harvested all of the said crops growing upon the property and received the proceeds therefrom; that petitioner is informed and believes and upon such information and belief alleges that the said crops were sold for the sum of $1,500.00; that the said debtor and said Noah Adair, as Conciliation Commissioner, have failed and refused to account to petitioner for the proceeds of the said crops and petitioner is informed and believes and upon such information and belief alleges that the entire proceeds of said crops have been spent by the said debtor and the said Noah Adair, as Conciliation Commissioner.

VII

That the fair and reasonable value of the property securing the indebtedness to petitioner, as above alleged, does not exceed the sum of $15,000.00; that petitioner has refused and now refuses to enter into any further negotiations with the above named debtor for any composition or extension of the date of payment of the said indebtedness to petitioner.

VIII

That petitioner is informed and believes and upon such information and belief alleges that the crops growing upon the real property of the said debtor during the year 1935 are now being harvested by the said debtor and the said [fol. 100-10] Noah Adair, as Conciliation Commissioner in and for the County of San Bernardino; that the said crops are subject to the crop mortgage held by petitioner and petitioner is entitled to the proceeds thereof.

Wherefore, Petitioner p-ays that the above entitled proceedings be forthwith dismissed.

Bank of America National Trust and Savings Association, by A. G. Maurer, Vice President. Edmund Nelson, Hugo A. Steinmeyer, Attorneys for Petitioner.

Duly sworn to by A. G. Maurer. Jurat omitted in printing.

[fol. 100-11] In United States District Court, Southern District of California, Central Division

No. 23615–M.

In the Matter of Andrea Cuccia, Debtor

Order of Dismissal

This matter having come on for hearing before the Court at the first meeting of creditors on February 14, 1935, the Bank of America National Trust and Savings Association appearing by its attorney Hugo A. Steinmeyer and the debtor, Andrea Cuccia, appearing in person and by his attorney Ralph W. Eckhar-t, and the debtor having been examined and evidence both oral and documentary having been admitted and Bank of America National Trust and Savings Association, a creditor of the above named debtor, having made a motion to dismiss the above entitled proceeding and the matter having been submitted to the Court for its decision, and the Court being fully advised in the premises, and

It appearing to the Court and the Court finds that Andrea Cuccia, the above named debtor, did not at any time prior to the filing of the amended petition herein make any offer of composition or extension proposal in good faith to his creditors, it is therefore,

Ordered, Adjudged and Decreed that the above entitled proceedings be and the same hereby are dismissed.

Done in open Court this 16 day of April, 1935.

D. W. Richards, Referee in Bankruptcy.

[fol. 100-12] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF MAILING—Filed October 4, 1935

Edna M. Mahler, being first duly sworn, deposes and says: I am a citizen of the United States, a resident of Los Angeles county, over the age of eighteen years and not a party to the above proceedings. On the 3 day of October, 1935, I served the attached Notice of Motion to Dismiss on Ralph W. Eckhardt, attorney for the above named debtor, by placing a true copy thereof in an envelope addressed to said attorney at his business address at 317 Anderson Building, San Bernardino, California, and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. There is delivery service by United States mail at the place so addressed and there is regular communication by mail between the place of mailing and the place so addressed.

Edna M. Mahler.

Subscribed and sworn to before me this 3rd day of October, 1935. Maude F. Leng, Notary Public in and for said County and State. (Seal.)

[File endorsement omitted.]

[fol. 100-13] IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION TO DISMISS

To Andrea Cuccia, the Debtor Above Named, and to Ralph W. Eckhardt, His Attorney:

You, and Each of You, Will Please Take Notice that on Monday, the 14th day of October, 1935, at the hour of 10:00 A.M., or as soon thereafter as counsel may be heard, in the courtroom of the above entitled Court before the Honorable Paul J. McCormick, in room 400 Federal Building, Temple and Main Streets, Los Angeles, California, Bank of America National Trust and Savings Association, a creditor of the above named debtor will move the above entitled Court for an order dismissing the above entitled proceedings.

Said motion will be made and based upon all the papers on file in the above entitled proceedings and upon the petition of Bank of America National Trust and Savings Association for dismissal of the proceedings, a copy of which is served upon you herewith, and upon the ground that no composition or extension agreement can be had between the above named debtor and his creditors.

Dated September 30, 1935.

Edmund Nelson, Hugo A. Steinmeyer, Attorneys for Petitioner Bank of America National Trust and Savings Association.

[fol. 100-14] In United States District Court

Order Dismissing Proceedings—Filed October 14, 1935

The petition of Bank of America National Trust and Savings Association for an order dismissing the above entitled proceedings having come on for hearing on October 14, 1935, the petitioner being represented by Edmund Nelson and Hugo A. Steinmeyer, its attorneys, and the debtor above named being represented by Ralph W. Eckhar-t, his attorney, and evidence having been introduced, and it appearing to the Court that the allegations of the said petition are true and that the petitioner is entitled to relief prayed for therein, and the Court being fully advised in the premises, Now Therefore,

It is Hereby Ordered, Adjudged and Decreed that the above entitled proceedings be and the same hereby are dismissed.

Dated October 14th, 1935.

Paul J. McCormick, Judge.

[File endorsement omitted.]

(Endorsed:) Printed Supplemental Transcript of Record. Filed April 27, 1937. Paul P. O'Brien, Clerk.

[fol. 100-15] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 27558-M

In the Matter of ANDREA CUCCIA, Debtor.

PETITION FOR LEAVE TO REFILE UNDER SECTION 75 OF THE U. S. BANKRUPTCY ACT AND FOR RESTRAINING ORDER—Filed March 16, 1936

To the Honorable Paul J. McCormick, Judge U. S. District Court:

The petition of Andrea Cuccia, of Etiwanda, in the County of San Bernardino, California, respectfully represents:

That prior to the 11th day of October, 1935 your petitioner failed in his petition in proceedings for composition and extension to obtain an agreement between himself and his creditors and therefore filed his petition for reinstatement and adjudication as a bankrupt under Section 75 (s) of the Bankruptcy Act of the U. S., which said case was dismissed because the law was unconsti-tional.

That since the dismissal of the proceedings filed in Case No. 23615-M, and since the foreclosure sale of the property belonging to your petitioner hereinbefore mentioned in the new petition, your petitioner has discovered new facts and evidence which he believes will justify the Court in granting leave to file a new petition under Section 75 of said Act, said newly discovered facts and evidence hereinbefore mentioned are as follows:

[fol. 100-16] That the Federal Land Bank of Berkeley, a government loaning agency, has informed your petitioner that it will loan your petitioner $7,500 on the land hereinbefore mentioned.

That from the sale of a right of way through the property belonging to your petitioner herein the Bank of America National Trust and Savings Association and/or the California Lands, Inc., a subsidiary and/or holding company of the said Bank, received approximately $3,000 for said right of way, to which said sum your petitioner is entitled.

That there is on deposit for crops for 1935 raised on the land of your petitioner approximately $1600, which has been turned over to the Bank of America, to which your petitioner is entitled.

That if your petitioner is permitted to refile proceedings under Section 75 of the Bankruptcy Act at the present time, he will be in position to offer his creditors approximately 99% of the total indebtedness heretofore existing.

That subsequent to the sale and purchase of the land, proceedings were had that the creditor obtained judgment authorizing it to dispossess your petitioner and remove him from the property hereinbefore mentioned on the 16th day of March.

That your petitioner is still in possession of said premises.

That if permission is granted to your petitioner to refile a new petition under Section 75 of the Bankruptcy Act [fol. 100-17] a hearing of said petition could not be obtained before April 6, 1936, and that if your petitioner is not granted relief from the effect of the judgment permitting the creditor to dispossess him of the land until such time as a hearing on the new petition may be held your petitioner will suffer great and irreparable injury in this that his offer of composition as set out in said petition will be of no avail and he will lose his life savings and will have no place wherein to live or make a livelihood.

That if a hearing is granted, your petitioner is informed and believes that his offer will be satisfactory.

Wherefore, your petitioner prays:

(1) That the Court make its order granting your petitioner leave to file a new petition under Section 75 of the Bankruptcy Act and that a meeting of the creditors be held and hearing had to determine whether or not said composition as offered is acceptable.

(2) That until the time when such hearing under said petition may be had the Bank of America National Trust & Savings Association, its attorneys, agents and servants, and the Sheriff of San Bernardino County, California, and/or the California Lands, Inc., be ordered and restrain and forbidden from interferring with the possession of said property hereinabove described in said new petition, and

that no further proceedings shall be taken to dispossess your petitioner from his land.

Andrea Cuccia, Petitioner.

[fol. 100-18] *Duly sworn to by Andrea Cuccia. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 100-19] In United States District Court

Restraining Order and Leave to Refile Under Section 75 of the Bankruptcy Court—Filed March 16, 1936

Upon Reading and Filing of the verified petition of Andrea Cuccia, and it appearing to the satisfaction of the Court from said petition that the petitioner has discovered new facts, and

It further appearing to the Court that Andrea Cuccia is in position to effect a satisfactory composition with his creditors, and

It further appearing to the Court that unless a restraining order is granted as prayed for in said petition, the petitioner will suffer great and irreparable injury before the matter set out in the petition can be heard,

It is Therefore Ordered and Allowed that the petitioner, Andrea Cuccia, file new petition under Section 75 of the Bankruptcy Act, and that pending the hearing of said petition, Bank of America National Trust and Savings Association and/or the California Lands, Inc., a subsidiary and/or holding company of said Bank, its attorneys, agents and servants, and the Sheriff of San Bernardino County, California, are hereby restrained from interferring with Andrea Cuccia's possession of said property described in the petition under Section 75, and they are further enjoined and restrained from dispossessing and or evicting said petitioner until such time as the Court shall make its further order in the premises.

Paul J. McCormick, Judge U. S. District Court

Dated March 16, 1936 at 12:30 M.

[File endorsement omitted.]

(Endorsed:) Petition for leave to re-file under Sec. 75, and Restraining Order and Leave to Refile, Filed, as part of printed transcript of record, May 1, 1936. Paul P. O'Brien, Clerk.

[fol. 100-20] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 8187

[Title omitted]

PRÆCIPE FOR RECORD—Filed November 6, 1937

To Paul P. O'Brien, Clerk of the Above Entitled Court:

SIR:

Please prepare and forward to Charles Elmore Cropley, Clerk of the Supreme Court of the United States, to be filed in the case of Noah Adair, Petitioner, vs. Bank of America National Trust and Savings Association, a National Banking Association, Respondent, October Term, 1937, No. 365, certified printed copies of the following portions of the transcript of record before the above entitled Court in the above entitled action:

1. Debtor's Petition in Proceedings Under Section 75 of the Bankruptcy Act, No. 23615-M;
2. Amended Debtor's Petition in Proceedings under Section 75, subsection (s) of the Bankruptcy Act;
[fol. 100-21] 3. Petition of Creditor for Order Dismissing Proceedings;
4. Notice of Motion to Dismiss;
5. Order Dismissing Proceedings;
6. Petition for Leave to Refile under Section 75 of the United States Bankruptcy Act and for Restraining Order, No. 27558-M; and
7. Restraining Order and Leave to Refile under Section 75 of the Bankruptcy Court.

Dated: This 3rd day of November, 1937.

William C. Day, Attorney for Bank of America National Trust and Savings Association. Louis Ferrari, Edmund Nelson, Hugo A. Steinmeyer, of Counsel.

Due service and receipt of a copy of the foregoing Præcipe is hereby admitted this 5th day of November, 1937.
William Lemke, Harold M. Sawyer, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 100-22] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 100-23] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter: William Lemke. File No. 41,846. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 365. Noah Adair, petitioner, vs. Bank of America National Trust and Savings Association. Petition for writ of certiorari and exhibit thereto. Filed August 30, 1937. Term No. 365, O. T., 1937.